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RALPHS GROCERY COMPANY AND
THE KROGER CO.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

YOSUKE HIRADATE, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

RALPHS GROCERY COMPANY, an
Ohio Corporation; THE KROGER
COMPANY, an Ohio Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. 2:22-cv-3593

**DEFENDANTS' NOTICE OF
REMOVAL**

[From the Superior Court of California,
County of Los Angeles, No.
21TRCV00301]

Compl. Filed: April 19, 2021
Amend. Compl. Filed: April 25, 2022
Action Removed: May 25, 2022

TO THE CLERK AND TO PLAINTIFF AND HIS ATTORNEYS:

PLEASE TAKE NOTICE that Defendants Ralphs Grocery Company and The Kroger Co. (collectively, Defendants) hereby remove this action from the Superior Court of the State of California for the County of Los Angeles to the United States District Court for the Central District of California. Defendants are entitled to remove this action to federal district court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 based on the following:

State Court Action

1. On April 19, 2021, Plaintiff Yosuke Hiradate commenced an individual action in the Superior Court of the State of California in and for the County of Los Angeles, captioned *Hiradate v. Ralphs Grocery Co., et al.*, Case No. 21TRCV00301 (the State Court Action). A true and correct copy of the complaint in the State Court Action is attached hereto as **Exhibit 1** (the Complaint).

2. On July 7, 2021, Defendants filed a demurrer to the Complaint. A true and correct copy of the demurrer is attached hereto as **Exhibit 10**. Mr. Hiradate filed a First Amended Complaint (FAC) on January 20, 2022. A true and correct copy of the FAC is attached hereto as **Exhibit 16**. On April 25, 2022, Mr. Hiradate filed the operative Second Amended Complaint (SAC). A true and correct copy of the SAC is attached hereto as **Exhibit 27**. Mr. Hiradate served the SAC on Defendants that day.

3. In the SAC, Mr. Hiradate alleges that he purchased a \$500 gift card from a Ralphs store, but that third parties defrauded him and Defendants by tampering with the gift card prior to the sale, rendering it worthless. (SAC ¶¶ 10–11.) When Mr. Hiradate reported the fraud, a store employee assisted him in attempting to obtain a refund from the bank that issued the gift card. (*Id.* ¶ 11.) Even so, Mr. Hiradate claims Defendants should have done more to prevent the third parties' fraudulent scheme. (*Id.* ¶ 23.) For the first time in the SAC, Mr. Hiradate now brings these claims on behalf of a putative nationwide class of “all

1 persons who purchased a gift card from Ralph's and/or Kroger . . . who were not
 2 able to utilize the total monetary amount of gift card value purchased[.]” (*Id.* ¶ 25.)
 3 Mr. Hiradate seeks restitution, damages, and injunctive relief, among other things.
 4 (*Id.* at p. 16.)

5 4. In addition to the pleadings and filings mentioned above, all other
 6 pleadings, processes, and orders served upon or received by Defendants in the State
 7 Court Action or found on the docket in the State Court Action are attached hereto.

- 8 a. The Complaint is attached hereto as **Exhibit 1**;
- 9 b. The Summons is attached hereto as **Exhibit 2**;
- 10 c. The Civil Case Cover Sheet is attached hereto as **Exhibit 3**;
- 11 d. The Notice of Case Assignment is attached hereto as **Exhibit 4**;
- 12 e. The April 21, 2021 Order to Show Cause re. Failure to File
 13 Proof of Service is attached hereto as **Exhibit 5**;
- 14 f. The April 21, 2021 Notice of Case Management Conference is
 15 attached hereto as **Exhibit 6**;
- 16 g. Plaintiff's April 27, 2021 Proof of Personal Service on Kroger is
 17 attached hereto as **Exhibit 7**;
- 18 h. Plaintiff's April 27, 2021 Proof of Personal Service on Ralphs is
 19 attached hereto as **Exhibit 8**;
- 20 i. Defendants' June 4, 2021 Declaration of Jacob Harper re.
 21 Inability to Meet and Confer is attached hereto as **Exhibit 9**;
- 22 j. Defendants' July 7, 2021 Demurrer to Complaint is attached
 23 hereto as **Exhibit 10**;
- 24 k. Defendants' July 7, 2021 Declaration of Jacob Harper in support
 25 of Demurrer is attached hereto as **Exhibit 11**;
- 26 l. Plaintiff's July 8, 2021 Request for Entry of Default is attached
 27 hereto as **Exhibit 12**;
- 28

- m. Plaintiff's July 13, 2021 Certificate of Mailing is attached hereto as **Exhibit 13**;
- n. The Clerk's July 13, 2021 Notice of Rejection of Electronic Filing re. Plaintiff's Request for Entry of Default is attached hereto as **Exhibit 14**;
- o. Defendants' September 22, 2021 Notice re. Order Continuing Case Management Conference and Hearing on Demurrer is attached hereto as **Exhibit 15**;
- p. Plaintiff's First Amended Complaint is attached hereto as **Exhibit 16**;
- q. Plaintiff's January 24, 2022 Case Management Statement is attached hereto as **Exhibit 17**;
- r. Defendants' January 25, 2022 Case Management Statement is attached hereto as **Exhibit 18**;
- s. Defendants' January 25, 2022 Notice of Non-Opposition to Demurrer to Complaint is attached hereto as **Exhibit 19**;
- t. Plaintiff's January 26, 2022 Notice of Timely Filing and Service of First Amended Complaint is attached hereto as **Exhibit 20**;
- u. The Court's February 2, 2022 Minute Order re. Case Management Conference is attached hereto as **Exhibit 21**;
- v. Defendants' February 24, 2022 Declaration of Jacob Harper re. Inability to Meet and Confer is attached hereto as **Exhibit 22**;
- w. Plaintiff's March 11, 2022 Substitution of Attorney is attached hereto as **Exhibit 23**;
- x. The April 1, 2022 Stipulation to Extend Deadline to Respond to First Amended Complaint is attached hereto as **Exhibit 24**;
- y. The April 8, 2022 Notice of Continuance is attached hereto as **Exhibit 25**;

- z. The April 14, 2022 Stipulation to Extend Deadline to Respond to First Amended Complaint is attached hereto as **Exhibit 26**;
- aa. Plaintiff's Second Amended Complaint is attached hereto as **Exhibit 27**;
- bb. Defendants' May 17, 2022 Case Management Statement is attached hereto as **Exhibit 28**;
- cc. Plaintiff's May 17, 2022 Case Management Statement is attached hereto as **Exhibit 29**;
- dd. The Notice to Plaintiff is attached hereto as **Exhibit 30**; and
- ee. A copy of the docket in the State Court Action is attached hereto as **Exhibit 31**.

5. The State Court Action is removable to this Court because the Court has original jurisdiction and the Central District of California encompasses the location in which the State Court Action is currently pending (i.e., Los Angeles, California). *See* 28 U.S.C. § 1332(d)(2) ("The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant"); 28 U.S.C. § 1441(a) ("[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending.").

The Action Is Removable Under the Class Action Fairness Act,
28 U.S.C. § 1332(d)

6. This Court has original jurisdiction pursuant to the Class Action Fairness Act of 2005 (CAFA). CAFA was enacted based on Congress's concern that "cases involving large sums of money, citizens of many different States, and issues of national concern, have been restricted to State courts even though they

1 have national consequences.” 151 Cong. Rec. S1086-01, S1103 (Feb. 8, 2005).
 2 CAFA’s purpose is to allow “[f]ederal court consideration of interstate cases of
 3 national importance” 28 U.S.C. § 1711, stat. note, subd. (b)(2).

4 7. “[N]o antiremoval presumption attends cases invoking CAFA, which
 5 Congress enacted to facilitate adjudication of certain class actions in federal court.”
 6 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

7 8. CAFA extends federal jurisdiction over class actions where: (1) any
 8 member of the proposed class is a citizen of a state different from any defendant
 9 (i.e., minimal diversity exists); (2) there are at least 100 members in all proposed
 10 plaintiff classes combined; (3) the amount in controversy exceeds \$5 million; and
 11 (4) no exception to jurisdiction applies. *See* 28 U.S.C. § 1332(d). As explained
 12 below, each of these requirements is satisfied in this case.

13 ***The Minimal Diversity Requirement Is Satisfied***

14 9. A putative class action is removable based on diversity jurisdiction if
 15 “any member of a class of plaintiffs is a citizen of a State different from any
 16 defendant” 28 U.S.C. § 1332(d)(2)(A).

17 10. Mr. Hiradate is a citizen and resident of California. (SAC ¶ 3.) The
 18 putative nationwide class Mr. Hiradate seeks to represent comprises citizens of any
 19 and all states. (*Id.* ¶ 25.)

20 11. Ralphs and Kroger are corporations incorporated in Ohio and have
 21 their principal places of business in Cincinnati, Ohio. A corporation is a citizen of
 22 every state in which it is incorporated and of the state it has its principal place of
 23 business. *See* 28 U.S.C. § 1332(c)(1). Thus, Ralphs and Kroger are citizens of
 24 Ohio for determining minimal diversity.

25 12. Therefore, sufficient (and minimal) diversity of citizenship exists
 26 between the relevant parties in this case.

Plaintiff's Proposed Class Exceeds 100 Members

13. This action is a proposed “class action” under 28 U.S.C. § 1332(d)(1)(B), which is defined as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action”

14. To remove a class action under CAFA, “the number of members of all proposed plaintiff classes in the aggregate” must be at least 100. 28 U.S.C. § 1332(d)(5)(B).

15. Mr. Hiradate seeks to represent a class composed of “[a]ll persons who purchased a gift card from a Ralph’s [sic] and/or Kroger store, for a specified monetary amount, and who were not able to utilize the total monetary amount of gift card value purchased, because the total monetary amount was not available on the gift card after purchase.” (SAC ¶ 25.)

16. According to Mr. Hiradate’s SAC, more than 1,000 persons purchased such gift cards. (*Id.* ¶ 26.)

17. Therefore, according to the SAC, the members of Mr. Hiradate’s proposed class exceed 100.

The Amount in Controversy Exceeds \$5 Million

18. Where, as here, “the plaintiff’s complaint does not state the amount in controversy, the defendant’s notice of removal may do so.” *Dart Cherokee*, 574 U.S. at 84. To establish the amount in controversy, a notice of removal “need not contain evidentiary submissions.” *Id.* Rather, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 89.

19. For purposes of removal only, and without conceding that Mr. Hiradate or the putative class are entitled to any damages, remedies, or penalties whatsoever, the aggregated claims of the putative class, as pleaded in the SAC, exceed the

jurisdictional amount of \$5,000,000 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2); *see also Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010) (removing defendant need only show “that the potential damages could exceed the jurisdictional amount”); *Woods v. CVS Pharm., Inc.*, 2014 WL 360185, at *2 (C.D. Cal. Jan. 30, 2014) (“The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.”) (alterations and quotations omitted).

20. The SAC seeks “restitution and disgorgement of the money and property” Defendants obtained based on the conduct alleged in the SAC, which includes sales of gift cards ranging up to \$500 nationwide, and over an unspecified period of time. (SAC at p. 16.) The SAC also seeks “general damages” and “special damages.” (*Id.*) During the period 2017 through 2021, which is the time period for this complaint, Defendants have sold gift cards with total sales of at least \$2.5 million for the period. Thus, without conceding that Mr. Hiradate’s alleged measure of damages would be the proper measure of relief for any of his claims, or that he or any putative plaintiff are entitled to any relief, based on Defendants sales of gift cards nationwide over the past four years, it is reasonably possible that disgorgement or compensatory damages would exceed \$2,500,000 in liability.

21. The SAC also seeks “exemplary damages.” (SAC at p. 16.) Juries regularly award exemplary or punitive damages in cases involving CLRA claims at ratios higher than 1:1 compared to compensatory damages. *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020) (holding defendant satisfied its burden of establishing the amount in controversy on removal “by citing four cases where juries had awarded punitive damages at ratios higher than 1:1 for claims based on the CLRA”). Thus, without conceding that Mr. Hiradate’s alleged measure of damages would be the proper measure of relief for any of his claims, or that he or any putative plaintiff are entitled to any relief, it is reasonably possible that Defendants could be liable for punitive damages exceeding \$2,500,000.

22. The SAC also seeks attorneys' fees. (SAC at p. 16.) In the Ninth Circuit, likely attorneys' fees should also be included in the amount in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155 (9th Cir. 1998). A removing defendant can establish the likely attorneys' fees by identifying cases in which plaintiff's counsel has requested similar fees. *See Greene*, 965 F.3d at 774 n.4 ("Based on [defendant's] evidence that [plaintiff's] attorney sought 35 percent in a similar case, it is reasonable to assume that [plaintiff's] attorney would seek fees equal to 25 percent of the amount in controversy if he were to prevail."). Mr. Hiradate's attorneys have sought attorneys' fees equal to 25 percent of the common fund in other class actions involving claims under the UCL, CLRA, FAL, and implied warranty of merchantability. *See, e.g., In re MagSafe Apple Power Adapter Litig.*, 2015 U.S. Dist. LEXIS 11353, at *46 (N.D. Cal. Jan. 30, 2015); *In re Toll Rds. Litig. Penny Davidi Borsuk*, 2021 U.S. Dist. LEXIS 248189, at *27 (C.D. Cal. May 5, 2021). Accordingly, attorneys' fees in the amount of 25 percent of the possible common fund should be included in the amount in controversy here. Because it is reasonably possible that the common fund could amount to at least \$5,000,000 (compensatory and punitive damages) attorneys' fees would amount to at least \$1,250,000. This comports with numerous class action cases involving California consumer protection statute causes of action (such as claims under the CLRA, the UCL, and warranties) and allegations of false or misleading sales practices, where attorneys have sought in excess of \$1,250,000 million in attorneys' fees. *See, e.g., Hendricks v. Starkist Co.*, 2016 WL 5462423 (N.D. Cal. Sep. 29, 2016) (UCL, CLRA, false advertising, and implied warranty consumer protection class action; seeking approval of \$4 million in fees); *Brown v. Hain Celestial Grp., Inc.*, 2016 WL 631880 (N.D. Cal. Feb. 17, 2016) (UCL and CLRA consumer protection class action; seeking approval in excess of \$3 million in fees); *Retta v. Millennium Prods., Inc.*, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) (same; seeking approval in excess of \$2 million).

23. In sum, based on Mr. Hiradate's pleaded assertions and theories of recovery, the amount in controversy exceeds \$5,000,000.

Exceptions to Jurisdiction Do Not Apply

24. The complete diversity between Mr. Hiradate and Defendants not only satisfies the minimal diversity requirements under CAFA, but also precludes the "local controversy" and "home state" exceptions in 28 U.S.C. § 1332(d)(3) & (d)(4), exemptions for which Mr. Hiradate would bear the burden of proof in any event.

Kroger Satisfies the Requirements of 28 U.S.C. § 1446

25. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

26. This Notice of Removal has been filed within 30 days of service of the SAC on Defendants, from which it was first ascertainable that this case was removable pursuant to CAFA. *See* 28 U.S.C. § 1446(b)(2)(3). Because the SAC is the first pleading to bring claims on behalf of a putative class, the one-year limitation to removal under 28 U.S.C. § 1446(c)(1) does not apply. *See* 28 U.S.C. § 1453(b).

27. Concurrently with the filing of this Notice, Defendants will give written notice to all adverse parties and will file a copy of this Notice with the clerk of the Superior Court of the State of California in and for the County of Los Angeles. *See* 28 U.S.C. § 1446(d).

28. Defendants do not waive and expressly preserve all objections, defenses, and exceptions authorized by law, including but not limited to those permitted pursuant to Rule 12 of the Federal Rules of Civil Procedure.

1 WHEREFORE, Defendants remove the State Court Action to this Court.

2
3 DATED: May 25, 2022

DAVIS WRIGHT TREMAINE LLP
JACOB M. HARPER
JAMES H. MOON
PETER K. BAE

4
5
6 By: /s/ Jacob M. Harper
Jacob M. Harper

7
8 Attorneys for Defendants
Ralphs Grocery Company and The
9 Kroger Co.

EXHIBIT 1

Assigned for all purposes to: Torrance Courthouse, Judicial Officer: Gary Tanaka

Michael Louis Kelly, State Bar No. 82063

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5 *Counsel for Plaintiff Yosuke Hiradate*6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**8 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**9
10 YOSUKE HIRADATE,

11 Plaintiff,

12 v.

13 RALPH'S GROCERY COMPANY, an Ohio
14 Corporation; THE KROGER COMPANY, an
Ohio Corporation; and DOES 1-50, inclusive,

15 Defendants.

Case No. **21TRCV00301****COMPLAINT FOR DAMAGES AND
PERMANENT INJUNCTIVE RELIEF:**

1. Violation of California's Unfair Competition Law ("UCL"); Bus. & Prof. Code § 17200 *et seq.*
2. Violation of California's Consumer Legal Remedies Act ("CLRA"); Cal. Civil Code § 1750 *et seq.*
3. Violation of California's False Advertising Law ("FAL"), Bus & Prof. Code § 17500 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff YOSUKE HIRADATE ("Plaintiff" or "Mr. Hiradate") alleges as follows:

2 **THE PARTIES**

3 1. Plaintiff, at all relevant times herein, was and is a citizen and resident of Los Angeles
4 County, California. On December 21, 2019, Plaintiff visited Ralph's Grocery Store located at 1770
5 Carson Street in Torrance, California, and purchased a \$500 Visa Gift Card, as confirmed on the
6 receipt. Plaintiff also incurred a \$5.95 Gift Card activation fee. As soon as Plaintiff returned home, he
7 opened the Gift Card package and checked the balance for the first time, prior to using the Gift Card.
8 Plaintiff was shocked to learn the Gift Card he had just paid Ralph's \$500 for actually had zero value.
9 Plaintiff quickly returned to the Ralph's store that day to get an explanation for why the Gift Card had
10 no value when he first accessed it. There, Plaintiff spoke to the Store Manager, who specifically
11 informed him the Gift Card had been tampered with prior to purchase, which according to the Store
12 Manager involved someone's placement of a photo copy of another gift card over the Gift Card
13 Plaintiff had purchased, prior to check out at Ralph's, so the bar card for the other gift card would be
14 visible to receive any money added to the card by the Ralph's cashier at check out. The Store Manager
15 also informed Plaintiff that a staff member meeting regarding this exact problem had been held that
16 very same morning at the store, because valueless gift card sales at Ralph's were apparently a regular,
17 recurring problem. Additionally, a former assistant manager from another Ralph's store also told
18 Plaintiff gift card tampering has been an ongoing problem for years at Ralph's and that Ralph's is
19 aware of this precise issue happening frequently at its stores. Thereafter, despite his efforts, neither
20 Ralph's nor the bank returned Plaintiff's money, and he thus incurred a \$500 payment to Ralph's in
21 addition to the \$5.95 activation fee for nothing in return.

22 2. Plaintiff is informed and believes, and upon such information and belief alleges, that
23 defendant Ralph's Grocery Company ("RALPH'S") is an Ohio Corporation with its principal place of
24 business in Cincinnati, Ohio. RALPH'S is registered to do business in California and operates in Los
25 Angeles County, where its local headquarters are in Compton, California. RALPH'S is a multistate
26 corporation that operates a chain of grocery stores, selling goods to consumers throughout the country.

27 3. Plaintiff is informed and believes, and upon such information and belief alleges, that
28 defendant The Kroger Company ("KROGER") is an Ohio Corporation with its principal place of

1 business in Cincinnati, Ohio. KROGER is registered to do business in California and operates in Los
2 Angeles County, where its local headquarters are in Compton, California. Kroger operates, either
3 directly or through its subsidiaries such as defendant RALPH'S, which it wholly owns and operates,
4 supermarkets and multi-department stores nationwide. Defendants herein are collectively referred to
5 as "RALPH'S".

6 4. Plaintiff does not know the true names or capacities of the persons or entities sued
7 herein as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff
8 is informed and believes, and upon such information and belief alleges, that each of the DOE
9 Defendants is in some manner legally responsible for the damages suffered by Plaintiff as alleged
10 herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these
11 Defendants when they have been ascertained, along with appropriate charging allegations, as may be
12 necessary.

13 5. At all times herein mentioned, Defendants, and each of them, were the agents,
14 principals, servants, employees, and subsidiaries of each of the remaining Defendants, and were at all
15 times acting within the purpose and scope of such agency, service, and employment, and directed,
16 consented, ratified, permitted, encouraged, and approved the acts of each remaining Defendant.

17 JURISDICTION AND VENUE

18 6. This Court has jurisdiction over all causes of action asserted herein under the California
19 Constitution.

20 7. Venue is proper in this County because the acts and occurrences alleged herein occurred
21 in this County, and pursuant to California *Civil Code* § 1780(d) because Defendants do business here.

22 FACTUAL ALLEGATIONS

23 8. This action arises out of RALPH's practice of selling gift cards to California consumers
24 for specified monetary values where the gift cards actually have no value and are thus worthless to the
25 consumers. Despite RALPH's knowledge of this issue, RALPH'S sold Mr. Hiradate a worthless gift
26 card for which he paid a substantial amount of money to RALPH'S.

27 9. On December 21 2019, Plaintiff visited the RALPH'S store at 1770 Carson Street in
28 Torrance, California, and purchased a \$500 Visa Gift Card, as confirmed on the receipt he received.

1 Plaintiff also incurred a \$5.95 activation fee for the Gift Card. As soon as Plaintiff returned home after
2 making this purchase, he opened the Gift Card package and checked the balance for the first time, prior
3 to using the Gift Card. Plaintiff was shocked to learn the Gift Card he had just paid RALPH'S \$500
4 for actually had zero value.

5 10. Plaintiff quickly returned to the RALPH'S store on the same day to get an explanation
6 for why the Gift Card had no value when he first attempted to access it. There, Plaintiff spoke to the
7 Store Manager, Stephanie, who told him the Gift Card had been tampered with prior to purchase.
8 Stephanie also told Plaintiff she would call the Gift Card merchant in order to file a claim for gift card
9 fraud. After Stephanie filed the claim on that date, she was apparently provided a case number and 10
10 digit ID which she wrote on Plaintiff's Gift Card receipt. Stephanie also told Plaintiff on that same
11 date the scenario involved someone's placement of a photo copy of another gift card over the Gift Card
12 Plaintiff had purchased, prior to check out at RALPH'S, so the bar card for the other gift card would be
13 visible to receive any money added to the card by the RALPH'S cashier at check out.

14 11. Stephanie also informed Plaintiff during their conversation that a staff member meeting
15 regarding this exact problem had been held that very same morning at the store. There, staff members
16 at the RALPH'S store were apparently instructed to check for any of the detectable signs of tampering
17 on any gift cards RALPH'S sold, such as different textures between a valid card with ridges at the bar
18 code area and one that had been tampered with and had no such ridges. Additionally, a former
19 assistant manager Plaintiff spoke to from another RALPH'S store in the area also told him gift card
20 tampering has been an on-going problem for years at RALPH'S and that RALPH'S is aware of this
21 precise issue happening at its stores such as the one in Torrance.

22 12. Thereafter, Stephanie the RALPH'S Store Manager told Plaintiff he needed to call the
23 gift card company to request a new gift card, and then after calling, he would need to fax a copy of the
24 receipt, gift card, the tampering gift card number (i.e. the photo with a gift card number that was placed
25 over Plaintiff's gift card prior to his purchase of it at RALPH'S), and that Plaintiff would then receive
26 a new gift card within a few weeks. That night, Plaintiff tried to reach out to the Gift Card merchant
27 several times at the phone number on the back of the card, in order to attempt to have this issue
28

1 addressed but, despite several attempts, could not reach a service associate or anyone in management
2 at the Gift Card merchant to resolve this matter.

3 13. Thereafter, that same night Plaintiff returned to the RALPH'S store in Torrance where
4 Stephanie the Store Manager assisted him in submitting the documents via fax including the receipt
5 (with her writing of the case number and 10 digit ID), a photo copy of the gift card, a photo copy of the
6 package including the false bar code from the gift card, Plaintiff's photo ID and contact information.
7 To date, Plaintiff received no response from the gift card merchant or a replacement card with the
8 value of \$500 and the activation fee waived, and RALPH'S also has not compensated Plaintiff for the
9 loss.

10 14. Thus, RALPH'S knew gift cards such as the one Plaintiff purchased are subject to
11 tampering which can render them worthless, yet it still sold the Gift Card Plaintiff purchased to him
12 and retained \$505.95 of Plaintiff's money, despite that Plaintiff received no value in return whatsoever.

13 15. Subsequently, Plaintiff has learned of a number of California consumers who have been
14 similarly affected by purchasing a gift card at RALPH'S which had been tampered with prior to
15 purchase.

16 16. RALPH'S should not be selling these gift cards, or be allowed to sell these gift cards at
17 all, considering its actual knowledge of the pervasive tampering issue at its stores, and that consumers
18 such as Plaintiff end up having purchased gift cards with no value at all.

19 **FIRST CAUSE OF ACTION**

20 **Business & Professions Code § 17200 et seq.**

21 **(Violation of Unfair Competition Law)**

22 **(By Plaintiff Against Defendants RALPH'S and KROGER and Does 1-50)**

23 17. Plaintiff restates and incorporates by reference each and every allegation contained in
24 paragraphs 1-16 as though fully set forth herein.

25 18. California *Business & Professions Code* § 17200 *et seq.* (hereafter referred to as the
26 "Unfair Competition Law" or "UCL") authorizes private lawsuits to enjoin acts of "unfair
27 competition," which include any unlawful, unfair, or fraudulent business practice.

28 19. The UCL imposes strict liability. Plaintiff need not prove that Defendants intentionally

1 or negligently engaged in unlawful, unfair, or fraudulent business practices – only that such practices
2 occurred.

3 20. RALPH’S selling of gift cards with specified values when the gift cards actually have
4 zero value to the consumer who purchased them, is an unlawful, unfair, and fraudulent business
5 practice prohibited by the UCL.

6 21. In carrying out their selling of gift cards for specified values when the gift cards
7 actually have zero value to the consumer who purchased them, Defendants have violated the Consumer
8 Legal Remedies Act, the False Advertising Law, and various other laws, regulations, statutes, and/or
9 common law duties. Defendants’ business practices alleged herein, therefore, are unlawful within the
10 meaning of the UCL.

11 22. The harm to Plaintiff and members of the public outweighs the utility of Defendants’
12 practices and, consequently, Defendants’ practices, as set forth fully above, constitute an unfair
13 business act or practice within the meaning of the UCL.

14 23. Defendants’ practices are additionally unfair because they have caused Plaintiff and
15 members of the public substantial injury, which is not outweighed by any countervailing benefits to
16 consumers or to competition, and which is not an injury the consumers themselves could have
17 reasonably avoided.

18 24. Defendants’ practices, as set forth above, have misled the general public in the past and
19 will mislead the general public in the future. Consequently, Defendants’ practices constitute an
20 unlawful and unfair business practice within the meaning of the UCL.

21 25. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition
22 may be brought by any “person ... who has suffered injury in fact and has lost money or property as a
23 result of such unfair competition.” Defendants’ misleading business practice – selling gift cards for
24 specified values when the gift cards actually have zero value to the consumer who purchased them –
25 directly and seriously injured Plaintiff and other members of the public who were thus deprived of
26 their property rights.

27 26. The unlawful, unfair and fraudulent business practices of Defendants are ongoing and
28

1 present a continuing threat that members of the public will be misled into believing they are purchasing
 2 gift cards for specified values but, like Plaintiff, will be deprived of that value and damaged
 3 financially.

4 27. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief
 5 ordering Defendants to cease this unfair business practice, as well as disgorgement and restitution of
 6 the money Defendants wrongfully obtained from him associated with its unfair business practice.

7 **SECOND CAUSE OF ACTION**

8 **Civil Code § 1750 et seq.**

9 **(Violation of the Consumer Legal Remedies Act)**

10 **(By Plaintiff Against RALPH'S and KROGER and Does 1-50)**

11 28. Plaintiff restates and incorporates by reference each and every allegation contained in
 12 paragraphs 1-27 as though fully set forth herein.

13 29. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a
 14 non-exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or
 15 business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-
 16 declared purpose is to protect consumers against these unfair and deceptive business practices, and to
 17 provide efficient and economical procedures to secure such protection. Cal. Civ. Code § 1760. The
 18 CLRA was designed to be liberally construed and applied in favor of consumers to promote its
 19 underlying purposes. *Id.*

20 30. More specifically, Plaintiff alleges that Defendants have violated paragraphs 4, 5, 9 and
 21 14 of *Civil Code* Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth
 22 herein. Defendants' unfair and deceptive business practices in carrying out the selling of gift cards for
 23 specified values when the gift cards actually have zero value to the consumer who purchased them, as
 24 described herein, were and are intended to and did and do result in Plaintiff, and other members of the
 25 public, being deprived of their right to a gift card with the value they paid for actually on it, in
 26 violation of the CLRA. Cal. Civ. Code § 1770 *et seq.* Plaintiff, and other members of the public, were
 27 damaged in that they paid purchase prices for gift cards higher than the zero value they received on the
 28 cards.

31. As a result of Defendants' unfair and/or deceptive business practices, Plaintiff and other members of the public, as a result of RALPH'S business practice, have suffered damage in that they lost a vested right in gift cards at specified values, because Defendants misrepresented that the offers for sale conferred rights to Plaintiff, and other members of the public, which they did not. Plaintiff seeks and is entitled to an order permanently enjoining Defendants from continuing to engage in the unfair and deceptive business practices alleged herein.

32. Pursuant to section 1782 of the CLRA, Plaintiff has notified Defendants in writing of the particular violations of Section 1770 of the CLRA Plaintiff alleges Defendants committed. In response, RALPH'S has not agreed to provide the monetary compensation Plaintiff demanded.

THIRD CAUSE OF ACTION

Business & Professions Code § 17500, et seq.

(Violation of the False Advertising Law)

(By Plaintiff Against RALPH'S and KROGER and Does 1-50)

33. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-32 as if fully set forth herein.

34. California *Business & Professions Code* § 17500 provides that "[I]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever ... any statement ... which is untrue or misleading, and which is known, or which by exercise of reasonable care should be known, to be untrue or misleading..."

35. Defendants misled consumers by selling gift cards for specified values when the gift cards actually have zero value to the consumer who purchased them.

36. As a direct and proximate result of Defendants' misleading and false advertising, Plaintiff, along with other members of the public, has suffered injury in fact and has lost money and/or property.

37. The misleading and false advertising described herein presents a continuing threat to

1 Plaintiff, and other members of the public, in that Defendants persist and continue to engage in these
2 practices, and will not cease doing so unless and until forced to do so by this Court. Defendants'
3 conduct will continue to cause irreparable injury to members of the public unless enjoined or
4 restrained, permanently.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for relief and judgment as follows:

- 7 1. For restitution and disgorgement of the money and property wrongfully obtained by Defendants
8 by means of its herein-alleged unlawful, unfair and fraudulent business practices;
9 2. An award of general damages according to proof;
10 3. An award of special damages according to proof;
11 4. Exemplary damages in light of Defendants' fraud, malice, and conscious disregard for the
12 rights of Plaintiff;
13 5. Injunctive relief, including without limitation, public injunctive relief, in the form of a
14 permanent injunction enjoining Defendants from engaging in the unlawful, unfair, and
15 fraudulent business practices alleged herein;
16 6. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation,
17 the CLRA, the common law private attorney general doctrine, and *Code of Civil Procedure* §
18 1021.5;
19 7. For costs of suit;
20 8. For such other and further relief as the court deems just and proper.

21 Dated: April 19, 2021

KIRTLAND & PACKARD, LLP

22
23
24 By: /s/ Joshua A. Fields
MICHAEL LOUIS KELLY
JOSHUA A. FIELDS

25
26 *Counsel for Plaintiff Yosuke Hiradate*
27
28

DEMAND FOR JURY TRIAL

Plaintiff YOSUKE HIRADATE hereby demands a jury trial.

Dated: April 19, 2021

KIRTLAND & PACKARD, LLP

By: /s/ Joshua A. Fields
MICHAEL LOUIS KELLY
JOSHUA A. FIELDS

Counsel for Plaintiff Yosuke Hiradate

DECLARATION OF PROPER VENUE BY YOSUKE HIRADATE

I, Yosuke Hiradate, declare as follows:

1. I am a Plaintiff in this action, and I am a resident and citizen of the State of California. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code § 1780(d) in that Los Angeles County is a county where Defendant does business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Torrance, California on April 15, 2021.



Yosuke Hiradate

EXHIBIT 2

SUM-100

**SUMMONS
(CITACION JUDICIAL)**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

RALPH'S GROCERY COMPANY, an Ohio Corporation; (continued on 2nd page)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

YOSUKE HIRADATE,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER: (Número del Caso):

21TRCV00301

SUPERIOR COURT OF CALIFORNIA, 825 Maple Ave, Torrance, CA 90503

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

KIRTLAND & PACKARD LLP, 1638 S. Pacific Coast Hwy, Redondo Beach, CA 90277

DATE: Sherri R. Carter Executive Officer / Clerk of Court
(Fecha) 04/19/2021Clerk, by
(Secretario)

E. Johnston

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED: You are served**

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): Ralph's Grocery Company, an Ohio Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

SUMMONS – PAGE 2

YOSUKE HIRADATE v. RALPH'S GROCERY COMPANY,
et al.

Case No.

21TRCV00301

NOTICE TO DEFENDANT: (continued from Page 1)

THE KROGER COMPANY, an Ohio Corporation; and DOES 1-50, inclusive,

EXHIBIT 3

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael Louis Kelly-SBN 82063 / Joshua A. Fields-SBN 242938 KIRTLAND & PACKARD LLP		FOR COURT USE ONLY
TELEPHONE NO.: (310) 536-1000 ATTORNEY FOR (Name): Plaintiff	FAX NO. (Optional): (310) 536-1001	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Avenue MAILING ADDRESS: CITY AND ZIP CODE: Torrance, CA 90503 BRANCH NAME: Southwest District		
CASE NAME: YOSUKE HIRADATE v. RALPH'S GROCERY COMPANY, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 21TRCV00301 JUDGE: DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Three


5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 16, 2021

Michael Louis Kelly/Joshua A. Fields

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE: YOSUKE HIRADATE v. RALPH'S GROCERY COMPANY, et al.

CASE NUMBER

21TRCV00301

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. | 7. Location where petitioner resides. |
| 2. Permissive filing in central district. | 8. Location wherein defendant/respondent functions wholly. |
| 3. Location where cause of action arose. | 9. Location where one or more of the parties reside. |
| 4. Mandatory personal injury filing in North District. | 10. Location of Labor Commissioner Office. |
| 5. Location where performance required or defendant resides. | 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
| 6. Location of property or permanently garaged vehicle. | |

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Other Personal Injury/ Property Damage/ Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

SHORT TITLE: YOSUKE HIRADATE v. RALPH'S GROCERY COMPANY, et al.		CASE NUMBER 21TRCV00301
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
	Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination
Other Employment (15)		<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE: YOSUKE HIRADATE v. RALPH'S GROCERY COMPANY, et al.		CASE NUMBER 21TRCV00301
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8 2, 8 1, 2, 8 1, 2, 8
	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment With Damages <input type="checkbox"/> A6123 Workplace Harassment With Damages <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case With Damages <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9

SHORT TITLE: YOSUKE HIRADATE v. RALPH'S GROCERY COMPANY, et al.	CASE NUMBER 21TRCV00301
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS: 1770 Carson Street
CITY: Torrance	STATE: CA	ZIP CODE: 90501	

Step 5: Certification of Assignment: I certify that this case is properly filed in the Southwest District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: April 16, 2021


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**CM-010**

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

EXHIBIT 4

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp <div style="text-align: center;"> FILED Superior Court of California County of Los Angeles 04/19/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>E. Johnston</u> Deputy </div>
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503		
NOTICE OF CASE ASSIGNMENT UNLIMITED CIVIL CASE		
Your case is assigned for all purposes to the judicial officer indicated below.		CASE NUMBER: 21TRCV00301

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

ASSIGNED JUDGE		DEPT	ROOM	ASSIGNED JUDGE		DEPT	ROOM
✓	Gary Y. Tanaka	B					

Given to the Plaintiff/Cross-Complainant/Attorney of Record

Sherri R. Carter, Executive Officer / Clerk of Court

on 04/20/2021
(Date)

By E. Johnston, Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the California Rules of Court, Title 3, Division 7, as applicable in the Superior Court, are summarized for your assistance.

APPLICATION

The Division 7 Rules were effective January 1, 2007. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Division 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Independent Calendaring Courts will be subject to processing under the following time standards:

COMPLAINTS

All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days.

CROSS-COMPLAINTS

Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

STATUS CONFERENCE

A status conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties to attend a final status conference not more than 10 days before the scheduled trial date. All parties shall have motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested form jury instructions, special jury instructions, and special jury verdicts timely filed and served prior to the conference. These matters may be heard and resolved at this conference. At least five days before this conference, counsel must also have exchanged lists of exhibits and witnesses, and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Three of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party, or if appropriate, on counsel for a party.

This is not a complete delineation of the Division 7 or Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is imperative.

Class Actions

Pursuant to Local Rule 2.3, all class actions shall be filed at the Stanley Mosk Courthouse and are randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be a class action it will be returned to an Independent Calendar Courtroom for all purposes.

***Provisionally Complex Cases**

Cases filed as provisionally complex are initially assigned to the Supervising Judge of complex litigation for determination of complex status. If the case is deemed to be complex within the meaning of California Rules of Court 3.400 et seq., it will be randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be complex, it will be returned to an Independent Calendar Courtroom for all purposes.

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503		FILED Superior Court of California County of Los Angeles 04/21/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>M. Fondon</u> Deputy
PLAINTIFF(S): Yosuke Hiradate		
DEFENDANT(S): Ralph's Grocery Company et al		
ORDER TO SHOW CAUSE HEARING		CASE NUMBER: 21TRCV00301

To the party / attorney of record:

You are ordered to appear for an Order to Show Cause Hearing on 07/26/2021 at 8:30 AM in department B of this court, Torrance Courthouse, and show cause why sanctions should not be imposed for:

☒ Failure to file proof of service.

Failure to comply or appear may result in sanctions pursuant to one or more of the following: California Rules of Court, rule 2.30 and rule 3.1340; Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.310, 583.360, 583.410, 583.420, 583.430; and Government Code section 68608.

☒ To avoid a mandatory appearance all required documents must be filed at least 5 days prior to the date of the hearing.



Gary Y. Tanaka

Dated: 04/21/2021

Gary Y. Tanaka / Judge
Judicial Officer

ORDER TO SHOW CAUSE HEARING

EXHIBIT 6

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED Superior Court of California County of Los Angeles 04/21/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>M. Fondon</u> Deputy
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503		CASE NUMBER: 21TRCV00301
PLAINTIFF: Yosuke Hiradate		
DEFENDANT: Ralph's Grocery Company et al		
NOTICE OF CASE MANAGEMENT CONFERENCE		

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled at the courthouse address shown above on:

Date:	10/19/2021	Time:	8:30 AM	Dept.:	B
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NOTICE TO DEFENDANT: THE SETTING OF THE CASE MANAGEMENT CONFERENCE DOES NOT EXEMPT THE DEFENDANT FROM FILING A RESPONSIVE PLEADING AS REQUIRED BY LAW.

Pursuant to California Rules of Court, rules 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions, pursuant to LASC Local Rule 3.37, Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.360 and 583.410, Government Code section 68008, subdivision (b), and California Rules of Court, rule 2.2 et seq.



Gary Y. Tanaka

Dated: 04/21/2021

Gary Y. Tanaka / Judge
Judicial Officer

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named below:

☒ by depositing in the United States mail at the courthouse in Torrance, California, one copy of the original filed herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.

☐ by personally giving the party notice upon filing of the complaint.

Michael Kelly
1638 South Pacific Coast Hwy.

Redondo Beach, CA 90277

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 04/21/2021

By M. Fondon
Deputy Clerk

NOTICE OF CASE MANAGEMENT CONFERENCE

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503		FILED Superior Court of California County of Los Angeles 04/21/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>M. Fondon</u> Deputy
PLAINTIFF/PETITIONER: Yosuke Hiradate		
DEFENDANT/RESPONDENT: Ralph's Grocery Company et al		
CERTIFICATE OF MAILING		CASE NUMBER: 21TRCV00301

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Order to Show Cause Failure to File Proof of Service upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Torrance, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Michael Kelly
Kirtland & Packard LLP
1638 South Pacific Coast Hwy.
Redondo Beach, CA 90277

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 04/21/2021

By: M. Fondon
Deputy Clerk

CERTIFICATE OF MAILING

EXHIBIT 7

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Michael Louis Kelly, Esq. SBN: 82063 Kirtland & Packard LLP 1638 South Pacific Coast Highway Redondo Beach, CA 90277 TELEPHONE NO. (310) 536-1000 FAX NO. (310) 536-1001 E-MAIL ADDRESS (Optional): mfc@kirtlandpackard.com ATTORNEY FOR (Name) Plaintiff: Yosuke Hiradate		FOR COURT USE ONLY	
TORRANCE COURTHOUSE STREET ADDRESS 825 MAPLE AVE. MAILING ADDRESS: CITY AND ZIP CODE TORRANCE, CA 90503 BRANCH NAME *			
PLAINTIFF: Yosuke Hiradate DEFENDANT: Ralph's Grocery Company		CASE NUMBER: 21TRCV00301 Dept: B	
PROOF OF SERVICE OF SUMMONS		Ref No. or File No. 2710-1	

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:

BY FAX

- a. ☒ Summons
b. ☒ Complaint
c. ☒ Alternative Dispute Resolution (ADR) package
d. ☒ Civil Case Cover Sheet (served in complex cases only)
e. ☐ Cross-complaint
f. ☒ other (specify documents): Addendum, Notice of Case Assignment, Stipulation Package

3. a. Party served (specify name of party as shown on documents served):

The Kroger Company, an Ohio Corporation

- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):

Kaitlyn Mannix - Authorized to Accept Service

4. Address where the party was served: **CSC**
2710 Gateway Oaks Dr Ste 150N
Sacramento, CA 95833-3502

5. I served the party (check proper box)

- a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **4/23/2021** (2) at (time): **2:44 PM**

- b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):

- (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
- (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PETITIONER: Yosuke Hiradate

CASE NUMBER:

RESPONDENT: Ralph's Grocery Company

21TRCV00301


- c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):
- ☐ Additional page describing service is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): **The Kroger Company, an Ohio Corporation**
under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |
7. **Person who served papers**
- a. Name: **Robert J. Mason - Cal West Attorney Services, Inc**
- b. Address: **1201 W. Temple Street Los Angeles, CA 90026**
- c. Telephone number: **(213) 353-9100**
- d. **The fee** for service was: **\$ 95.00**
- e. I am:
- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: **03-007**
- (iii) County: **Placer County**
8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **4/23/2021**

Cal West Attorney Services, Inc
1201 W. Temple Street
Los Angeles, CA 90026
(213) 353-9100
www.calwest.info

Robert J. Mason

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

EXHIBIT 8

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Michael Louis Kelly, Esq. SBN: 82063 Kirtland & Packard LLP 1638 South Pacific Coast Highway Redondo Beach, CA 90277 TELEPHONE NO.: (310) 536-1000 FAX NO. (310) 536-1001 E-MAIL ADDRESS (Optional) mfc@kirtlandpackard.com ATTORNEY FOR (Name): Plaintiff: Yosuke Hiradate		FOR COURT USE ONLY
TORRANCE COURTHOUSE STREET ADDRESS 825 MAPLE AVE. MAILING ADDRESS CITY AND ZIP CODE TORRANCE, CA 90503 BRANCH NAME		
PLAINTIFF: Yosuke Hiradate DEFENDANT: Ralph's Grocery Company, et al		CASE NUMBER: 21TRCV00301 Dept: B
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No. 2710-1

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:

BY FAX

- a. ☒ Summons
- b. ☒ Complaint
- c. ☒ Alternative Dispute Resolution (ADR) package
- d. ☒ Civil Case Cover Sheet (served in complex cases only)
- e. ☐ Cross-complaint
- f. ☒ other (specify documents): Addendum, Notice of Case Assignment, Stipulation Package

3. a. Party served (specify name of party as shown on documents served):

Ralph's Grocery Company, an Ohio Corporation

- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):

Kaitlyn Mannix - Authorized to Accept Service

4. Address where the party was served: **2710 Gateway Oaks Dr Ste 150N
Sacramento, CA 95833-3502**

5. I served the party (check proper box)

- a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **4/23/2021** (2) at (time): **2:44 PM**

- b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):

- (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
- (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PETITIONER: Yosuke Hiradate

CASE NUMBER:

21TRCV00301

RESPONDENT: Ralph's Grocery Company, et al

- c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgment of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): **Ralph's Grocery Company, an Ohio Corporation**
under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: **Robert J. Mason - Cal West Attorney Services, Inc**
- b. Address: **1201 W. Temple Street Los Angeles, CA 90026**
- c. Telephone number: **(213) 353-9100**
- d. The fee for service was: **\$ 47.50**
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: **03-007**
- (iii) County: **Placer County**

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **4/23/2021**

Cal West Attorney Services, Inc
1201 W. Temple Street
Los Angeles, CA 90026
(213) 353-9100
www.calwest.info

Robert J. Mason

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

EXHIBIT 9

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
3 *jharper@dwt.com*
4 865 South Figueroa Street, Suite 2400
5 Los Angeles, California 90017-2566
6 Telephone: (213) 633-6800
7 Facsimile: (213) 633-6899

8
9 *Attorneys for Defendants*
10 *Ralphs Grocery Company*
11 *and The Kroger Co.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

12 YOSUKE HIRADATE,

13 Plaintiff,

14 vs.

15 RALPHS GROCERY COMPANY, an Ohio
16 Corporation; THE KROGER COMPANY, an
17 Ohio Corporation; and DOES 1-50, inclusive,

18 Defendants.
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Case No. 21TRCV00301

Assigned to the Hon. Gary Y. Tanaka

DECLARATION OF JACOB M. HARPER
REGARDING MEET INABILITY TO
MEET AND CONFER [CCP 430.41]

Action Filed: April 19, 2021

Trial Date: N/A

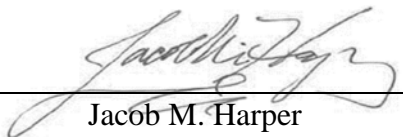
DECLARATION OF JACOB M. HARPER

I, Jacob M. Harper, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am a partner in the law firm of Davis Wright Tremaine LLP, counsel of record for defendants Ralphs Grocery Company and The Kroger Company (collectively, Defendants). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath. I make this declaration pursuant to Code of Civil Procedure section 430.41(a)(2) based on the inability of the parties to meet and confer at least five days prior to the date Defendants' response to the Complaint was due.

2. Defendants were served with the Complaint of plaintiff Yosuke Hiradate on April 23, 2021. Their original deadline to respond to the Complaint was May 24, 2021. On or about May 21, 2021, counsel for Mr. Hiradate provided a two-week extension until June 7, 2021, and we set a date to meet and confer on Defendants' anticipated demurrer in response to the complaint. I called counsel for Mr. Hiradate on that date but could not reach him. Counsel for Mr. Hiradate called me back but I was unavailable to take his call and the parties could not connect prior to June 2, 2021, the statutory deadline to meet and confer under Section 430.41. I intend to meet and confer with counsel for Mr. Hiradate at a mutually agreeable date and time prior to filing any demurrer, if one proves necessary after the parties' meet and confer discussions. Based on this declaration, Defendants' deadline to respond to the Complaint is continued by 30 days until July 7, 2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of June 2021, at Los Angeles, California.



Jacob M. Harper

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On June 4, 2021, I served the foregoing document(s) described as: **DECLARATION OF JACOB M. HARPER REGARDING MEET INABILITY TO MEET AND CONFER [CCP 430.41]** by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq. Joshua A. Fields, Esq. Kirtland & Packard LLP 1638 South Pacific Coast Highway Redondo Beach, CA 90277 mlk@kirtlandpackard.com jf@kirtlandpackard.com	Attorneys for Plaintiff Yosuke Hiradate
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I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on June 4, 2021, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Frank M. Romero

Print Name

Frank M. Romero

Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Torrance Courthouse Mailing Address: 825 Maple Avenue City, State and Zip Code: Torrance CA 90503	
SHORT TITLE: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 21TRCV00301

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

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EXHIBIT 10

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12 *and The Kroger Co.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHWEST DISTRICT

YOSUKE HIRADATE,

Plaintiff,

vs.

RALPHS GROCERY COMPANY, an Ohio
Corporation; THE KROGER COMPANY, an
Ohio Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 21TRCV00301
Assigned to the Hon. Gary Y. Tanaka

**DEFENDANTS' NOTICE OF DEMURRER
AND DEMURRER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES AND
PERMANENT INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Declaration of Jacob M. Harper and
Proposed Order Filed Concurrently]*

Date: December 21, 2021
Time: 8:30 a.m.
Dept.: B

Reservation ID No. 299213979011

Action Filed: April 19, 2021
Trial Date: N/A

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

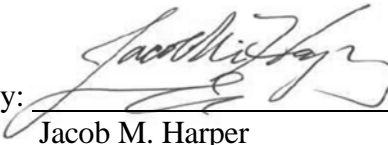
PLEASE TAKE NOTICE that on December 21, 2021, at 8:30 a.m., in Department B of the above-captioned Court, Defendants Ralphs Grocery Company and The Kroger Co. (collectively, Defendants) will and hereby do move for an order sustaining its demurrer to the First, Second, and Third Causes of Action for violation of the Unfair Competition Law, Bus. & Prof. Code, § 17200 *et seq.* (UCL), Consumers Legal Remedies Act, Civ. Code, § 1750 *et seq.* (CLRA), and the False Advertising Law, Bus. & Prof. Code, § 17500 *et seq.* (FAL), asserted in Plaintiff Yosuke Hiradate's Complaint, without leave to amend.

Defendants' demurrer is made on the grounds that the Complaint fails to state a viable cause of action. (See Code Civ. Proc., § 430.10.) Mr. Hiradate's claims fail as a matter of law because he (1) lacks standing to assert claims under California's consumer protection statutes based on his failure to allege his actual reliance on Defendants' purported misrepresentations; (2) failed to plead any factual allegations sufficient to hold both Ralphs (a retailer) and Kroger (a manufacturer) responsible for the unidentified misrepresentations, and (3) admits a third-party wrongdoer caused Mr. Hiradate's claimed harm.

This demurrer is based on this notice and demurrer; the attached Memorandum of Points and Authorities; the concurrently filed documents in support; all pleadings, records, and files in this action; and such evidence and argument as may be presented at or before the hearing.

Dated: July 7, 2021

DAVIS WRIGHT TREMAINE LLP

By: 
 Jacob M. Harper

*Attorneys for Defendants
 Ralphs Grocery Company
 and The Kroger Co.*

DEMURRER**DEMURRER TO THE FIRST CAUSE OF ACTION**

Defendants demur generally and specially to Mr. Hiradate's First Cause of Action in the Complaint for violation of the Unfair Competition Law, Business & Professions Code section 17200, on the ground that the pleading fails to state a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).)

DEMURRER TO THE SECOND CAUSE OF ACTION

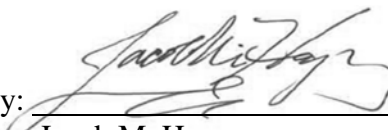
Defendants demur generally and specially to Mr. Hiradate's Second Cause of Action in the Complaint for violation of the Consumers Legal Remedies Act, Civil Code section 1750 *et seq.* on the ground that the pleading fails to state a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).)

DEMURRER TO THE THIRD CAUSE OF ACTION

Defendants demur generally and specially to Mr. Hiradate's Third Cause of Action in the Complaint for False and Misleading Advertising in Violation of the False Advertising Law, Business & Professions Code section 17500 *et seq.* on the ground that the pleading fails to state a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).)

Dated: July 7, 2021

DAVIS WRIGHT TREMAINE LLP

By: 
Jacob M. Harper

*Attorneys for Defendants
Ralphs Grocery Company
and The Kroger Co.*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Yosuke Hiradate filed this individual action against Defendants Ralphs Grocery Company and The Kroger Company (collectively, Defendants) to recover the value of a \$500 gift card that he purchased from a Ralphs store and the \$5.95 activation fee. (Compl. ¶ 1.) As alleged in his Complaint, third parties allegedly defrauded Mr. Hiradate and Defendants by tampering with the gift card prior to the sale. (*Ibid.*) When Mr. Hiradate reported the fraud, a store employee assisted him in obtaining a refund from the bank that issued the gift card. (*Ibid.*) Even so, Mr. Hiradate claims Defendants should have done more to prevent the third parties' fraudulent scheme. The action should be dismissed with prejudice because Mr. Hiradate failed to (1) allege his standing to sue Defendants under California's consumer protection statutes, (2) identify the representations made by the two Defendants, and (3) show that any purported representations were false when made.

First, Mr. Hiradate has failed to establish his statutory standing to assert claims under California's Unfair Competition Law (UCL), Consumers Legal Remedies Act (CLRA), and False Advertising Law (FAL). Mr. Hiradate's burden is to plead that Defendants' purported "misrepresentations were an immediate cause of the injury-causing conduct." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 328.) Here, Mr. Hiradate has not alleged what, if anything, he saw before buying the Gift Card or which Defendant was responsible for the representation. (See *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1363 [affirming dismissal where plaintiff failed to allege that he ever saw and read the alleged misrepresentations].)

Second, Mr. Hiradate has sued two independent entities without any effort to explain what each defendant did or said. "The concept of vicarious liability has no application to actions brought under the unfair business practices act." (*Emery v. Visa Internat. Serv. Ass'n* (2002) 95 Cal.App.4th 952, 960.) To the contrary, "[a] defendant's liability must be based on his personal 'participation in the unlawful practices' and 'unbridled control' over the practices that are found to violate section 17200 or 17500." (*Ibid.*) Even so, the Complaint conflates two distinct

1 corporate defendants and provides no explanation for what each entity purported said or did with
2 respect to the Gift Card.

3 *Third*, Mr. Hiradate fails to allege that any statement made by Defendants (whatever they
4 might be), were false when made. The common-sense rule is that “where a defendant lacked
5 knowledge of the facts that rendered its representations misleading at the time it made the
6 representations, courts have been unwilling to impose liability.” (*Kowalsky v. Hewlett-Packard*
7 *Co.* (N.D.Cal. 2011) 771 F.Supp.2d 1156, 1160.) Here, Mr. Hiradate does not allege that either
8 Defendant knew that any representation about the Gift Card was false when made. To the
9 contrary, he concedes that the Gift Cards worked as intended when put out for sale, but were
10 “tampered with” by third parties prior to purchase. (Compl. ¶¶ 10-11.)

11 Because Mr. Hiradate failed to allege any valid claim, the Court should sustain
12 Defendants’ Demurrer to his Complaint.

13 **II. FACTUAL BACKGROUND**

14 **A. Mr. Hiradate Purchased a \$500 Gift Card from a Ralphs Store.**

15 Mr. Hiradate alleges that he purchased a \$500 gift card at a Ralphs store on December 21,
16 2019. (Compl. ¶ 9.) In connection with his purchase, Mr. Hiradate paid \$500 plus a \$5.95
17 activation fee. (*Ibid.*) Upon returning home, Mr. Hiradate “opened the Gift Card package and
18 checked the balance for the first time” and was “shocked to learn the Gift Card ... actually had
19 zero value.” (*Ibid.*)

20 **B. Mr. Hiradate Is Informed That Third Parties Tampered With the Gift Card.**

21 Mr. Hiradate returned to the Ralphs store that same day. (Compl. ¶ 10.) He spoke with a
22 store manager who explained that the Gift Card “had been tampered with prior to purchase.”
23 (*Ibid.*) The store manager told Mr. Hiradate about a staff meeting that morning about third parties
24 tampering with gift cards to steal their value. (*Id.* ¶¶ 10-12.) According to Mr. Hiradate, the third
25 party placed a “photo copy of another gift card over the Gift Card Plaintiff had purchased, prior to
26 check out at Ralph’s, so the bar card for the other gift card would be visible to receive any money
27 added to the card by the Ralph’s cashier at check out.” (*Id.* ¶ 1.) The store manager assisted Mr.
28

Hiradate with pursuing a fraud claim with the Gift Card merchant. (*Id.* ¶ 10.) Mr. Hiradate claims he did not receive any response from the merchant or compensation from Ralphs. (*Id.* ¶ 13.)

C. Mr. Hiradate Files His Complaint Against Defendants.

On April 19, 2021, Mr. Hiradate initiated this action against Ralphs and Kroger. The Complaint alleges three causes of action against Defendants under the UCL, CLRA, and FAL. (Compl. ¶¶ 17-37.) The claims are each exclusively premised on Defendants allegedly selling Mr. Hiradate a gift card with zero value. (*Ibid.*) The Complaint refers to the two distinct corporate defendants collectively as “RALPH’S.” (*Id.* ¶ 3.) The only allegations against Kroger are that it is an Ohio corporation doing business in California, and that it “operates, either directly or through its subsidiaries such as defendant RALPH’S, which it wholly owns and operates, supermarkets and multi-department stores nationwide.” (*Ibid.*) Mr. Hiradate brings his claims for \$505.95 and other relief in his individual capacity and does not claim to be asserting a class action.

III. ARGUMENT

A. Mr. Hiradate Lacks Standing to Maintain His Claims.

Mr. Hiradate lacks standing to pursue his claims under the UCL, FAL, and CLRA because his Complaint lacks basic factual allegations showing his reliance on any representation made by either Defendant.

“The CLRA makes unlawful . . . various ‘unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.’” (*Veera v. Banana Republic, LLC* (2016) 6 Cal.App.5th 907, 915 [quoting Civ. Code, § 1770].) “The UCL prohibits, and provides civil remedies for, unfair competition, which it defines as ‘any unlawful, unfair or fraudulent business act or practice [or misleading advertising].’” (*Id.* at p. 914-15 [quoting Bus. & Prof. Code, § 17200].) “The [FAL] generally prohibits advertising that contains ‘any statement . . . which is untrue or misleading, and which is known, or . . . should be known, to be untrue or misleading.’” (*Id.* at p. 915 [quoting Bus. & Prof. Code, § 17500].)

To survive a demurrer, each of these consumer protection statutes requires factual allegations sufficient to establish a private plaintiff’s “standing.” “CLRA actions may be brought

1 only by a consumer who suffers any damage *as a result of the use or employment* of a proscribed
 2 method, act, or practice.” (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1366
 3 [emphasis in original].) “Relief under the CLRA is specifically limited to those who suffer
 4 damage, making causation a necessary element of proof.” (*Id.* at p. 1367.) “Accordingly,
 5 plaintiffs in a CLRA action must show not only that a defendant’s conduct was deceptive but that
 6 the deception caused them harm.” (*Ibid.*)

7 Likewise, the UCL and FAL were amended by California voters in 2004 such that a
 8 private party must now “(1) establish a loss or deprivation of money or property sufficient to
 9 qualify as injury in fact, i.e., *economic injury*, and (2) show that that economic injury was the
 10 result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of
 11 the claim.” (*Veera*, 6 Cal.App.5th at p. 916 [emphases in original].) A plaintiff may demonstrate
 12 “lost money or property” (i.e., “economic injury”) in a number of ways. For example, a plaintiff
 13 may “(1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise
 14 would have; (2) have a present or future property interest diminished; (3) be deprived of money or
 15 property to which he or she has a cognizable claim; or (4) be required to enter into a transaction,
 16 costing money or property, that would otherwise have been unnecessary.” (*Id.* at p. 323.)
 17 Importantly, “intangible” harms that do not involve economic injury do not constitute an injury
 18 sufficient to confer standing under the UCL or the FAL. (*Id.* at p. 324.)

19 This common “standing” requirement requires allegations of “actual reliance” sufficient to
 20 link the purported misrepresentation to the plaintiff’s purchase decision. (See *Durell, supra*, 183
 21 Cal.App.4th at p. 1367 [under the CLRA, a “misrepresentation is material for a plaintiff only if
 22 there is reliance—that is, without the misrepresentation, the plaintiff would not have acted as he
 23 did”]; *Veera, supra*, 6 Cal.App.5th at pp. 326-27 [under the UCL and FAL, a plaintiff “proceeding
 24 on a claim of misrepresentation . . . must demonstrate actual reliance on the allegedly deceptive or
 25 misleading statements, in accordance with well-settled principles regarding the element of reliance
 26 in ordinary fraud actions”].) In the broadest terms, to plead actual reliance, the “plaintiff must
 27 allege that the defendant’s misrepresentations were an immediate cause of the injury-causing
 28 conduct.” (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 328.)

As explained by the California Supreme Court, to meet this threshold standard, a plaintiff is required to—at the least—allege facts showing they, at the very least, “viewed the defendant’s advertising.” (*Kwikset, supra*, 51 Cal.4th at p. 321; accord *Durell, supra*, 183 Cal.App.4th at p. 1363 [affirming order sustaining demurrer based on plaintiff’s lack of standing under UCL, FAL, and CLRA because “The SAC does not allege Durell relied on . . . Sharp’s Web site representations Indeed, the SAC does not allege Durell ever visited Sharp’s Web site or even that he ever read the Agreement for Services.”]; *Letizia v. Facebook Inc.* (N.D.Cal. 2017) 267 F.Supp.3d 1235, 1244 [collecting cases]; *Kane v. Chobani, Inc.* (N.D.Cal. Sep. 19, 2013) 2013 U.S.Dist.LEXIS 134385, at *30 [applying *Kwikset*]; *Cohen v. E. W. Tea Co., LLC* (S.D.Cal. Aug. 2, 2018) 2018 U.S.Dist.LEXIS 130151, at *10 [“Reliance requires that a plaintiff allege she saw and read deceptive statements.”]; *Guzman v. Polaris Indus.* (C.D.Cal. May 12, 2021) 2021 U.S.Dist.LEXIS 98389, at *11 [“Courts have recognized there can be no actual reliance where the buyer did not see, read, or hear an alleged misrepresentation before purchasing the product, and that mere receipt of or exposure to a statement is insufficient to establish reliance and standing.”] [citing *Brazil v. Dole Packaged Foods, LLC* (9th Cir. 2016) 660 F.App’x 531, 533-34].)¹

Mr. Hiradate failed to allege his reliance on any allegedly false or deceptive representation regarding the Gift Card. ***The SAC does not even include a conclusory allegation that Mr. Hiradate saw, viewed, or relied on any representation made by either Defendant in deciding to purchase the Gift Card or even identify what the purported representation could be.*** The words “reliance” or “rely” do not appear anywhere in the Complaint. There is no description of any aspect of the presentation of the Gift Card that Mr. Hiradate claims to have viewed—let alone allegations showing which Defendant was responsible for the statement or presentation. The only statements Mr. Hiradate identifies at all are (1) a receipt he received from the Ralphs store (Compl. ¶¶ 1, 9), and (2) purported “specified values” on the Gift Card (Compl. ¶¶ 8, 20). But the

¹ Federal courts have developed a robust body of case law concerning mislabeling claims under California’s UCL, FAL, and CLRA. California has routinely adopted the rationales of these federal cases, which are based on the application of California law. (*See, e.g., Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294, 311; *Lavie v. Procter & Gamble Co.* (2003) 105 Cal App.4th 496, 504.)

1 Complaint does not include any allegation that Mr. Hiradate ever saw or viewed the receipt or the
2 specified values prior to his purchase. (*Ibid.*)

3 ***To be clear, standing under California’s consumer protection statutes cannot be***
4 ***satisfied based on Mr. Hiradate’s purported mere receipt of information that he claims was***
5 ***misleading if he did not see and rely upon that representation in making his purchase.*** (See,
6 e.g., *Graham v. VCA Antech, Inc.* (C.D.Cal. Sep. 12, 2016) 2016 U.S.Dist.LEXIS 145778, at *15
7 [“it is not enough to ‘receive’ a misrepresentation in a document; a plaintiff must see, read, or hear
8 the alleged misrepresentation and rely on it”]; *In re iPhone App. Litig.* (N.D.Cal. 2013) 6
9 F.Supp.3d 1004, 1022 [“Plaintiffs suggest that standing is established as long as a plaintiff
10 ‘receives’ a misrepresentation. The implication of this argument seems to be that a plaintiff can
11 show standing as long as the defendant has disseminated the alleged misrepresentation to her in
12 some fashion, regardless of whether the plaintiff ever actually sees, reads, or hears the defendant’s
13 statement. The Court questions how one can act in reliance on a statement one does not see, read,
14 or hear. Moreover, this argument is foreclosed by case law interpreting the actual reliance
15 requirements in the UCL and CLRA.”] [citing *Durell*, 183 Cal.App.4th at 1356; *Kwikset*, 51
16 Cal.4th at pp. 327-28]; *Phillips v. Apple Inc.* (N.D.Cal. Apr. 19, 2016) 2016 U.S.Dist.LEXIS
17 53148, at *22 [“If Plaintiffs did not view Apple’s statement until after suffering injury, then
18 viewing the statement could not have been the ‘immediate cause’ of the injury.”]]; *Rothman v.*
19 *Equinox Holdings, Inc.* (C.D.Cal. Jan. 13, 2021) 2021 U.S.Dist.LEXIS 6839, at *14 [accord].)

20 In addition to Mr. Hiradate’s failure to show that Defendants made any statement on which
21 he actually relied, Mr. Hiradate’s Complaint goes as far as to admit that third-party fraudsters were
22 the actual cause for his harm based on their independent and subsequent illegal actions. As
23 alleged in the Complaint, the Gift Card Mr. Hiradate purchased was “tampered with prior to
24 purchase.” (Compl. ¶ 1.) In particular, a third-party criminal placed a “photo copy of another gift
25 card over the Gift Card Plaintiff had purchased . . . so the bar card for the other gift card would be
26 visible to receive any money added to the card by the Ralph’s cashier at check out.” (*Ibid.*)²

27 ² If this case continues (it should not), Mr. Hiradate will have to demonstrate why he did
28 not obtain a full refund through the refund process that a Ralphs employee personally assisted him
with. His failure to mitigate his purported harm will prove fatal in this case.

1 In other words, Mr. Hiradate suffered his claimed loss because a third-party actor engaged
 2 in fraud against Defendants and tampered with the gift card before it came into his
 3 possession. His claims are thus barred—independent of statutory standing requirements—based
 4 on well-established rules of causation. (See *Kane v. Hartford Accident & Indem. Co.* (1979) 98
 5 Cal.App.3d 350, 360 [“The act of a third person in committing an intentional tort or crime is a
 6 superseding cause of harm to another resulting therefrom”]; *O’Keefe v. Inca Floats* (N.D.Cal. Oct.
 7 31, 1997) 1997 WL 703784, at *4 [“independent illegal acts of third parties are deemed
 8 unforeseeable and therefore, the sole proximate cause of the injury which excludes negligence of
 9 another as a cause of injury”]; *Jesse v. Malcmacher* (C.D.Cal. Apr. 5, 2016) 2016 WL 9450683, at
 10 *10 [“The illegal acts of third parties are unforeseeable as a matter of law.”].)

11 In short, Mr. Hiradate’s Complaint fails as a matter of law because it does not allege that
 12 representations by Defendants—as opposed to subsequent actions by third parties—caused his
 13 purported loss.

14 **B. Mr. Hiradate Failed to Allege a Claim Against the Two Defendants.**

15 The failure to allege standing is particularly problematic in this case because Mr. Hiradate
 16 is attempting to assert his claims against two separate and distinct defendants without any effort to
 17 differentiate between the two and what representations each made.

18 Ralphs is the retail grocer and Kroger is a distinct corporate entity that has some affiliation
 19 with Ralphs. (Compl. ¶¶ 2-3.) Mr. Hiradate simply refers to both collectively as “RALPH’S” in
 20 his Complaint and points to vague statements without any effort to attribute responsibility for any
 21 statement between the two separate entities. (*Id.* ¶ 3.) This improper, conclusory, and deficient
 22 attempt at “group pleading” is insufficient.

23 “The concept of vicarious liability has no application to actions brought under the unfair
 24 business practices act.” (*Emery v. Visa Internat. Serv. Ass’n* (2002) 95 Cal.App.4th 952, 960.) To
 25 the contrary, “[a] defendant’s liability must be based on his personal ‘participation in the unlawful
 26 practices’ and ‘unbridled control’ over the practices that are found to violate section 17200 or
 27 17500.” (*Ibid.* [citing *People v. Toomey* (1984) 157 Cal.App.3d 1, 14]; accord *In re Firearm*
 28 *Cases* (2005) 126 Cal.App.4th 959, 983.) “Similarly, under the CLRA, absent allegations of

1 participation or control, defendants cannot be held secondarily liable for the acts of third parties.”
 2 (*In re Hydroxycut Mktg. & Sales Practices Litig.* (S.D.Cal. 2014) 299 F.R.D. 648, 656.)

3 Applying established California law in the context of companies at different points in the
 4 chain of distribution, e.g., retailers and manufacturers, a private plaintiff must offer factual
 5 allegations about each party’s purported involvement in the alleged fraudulent scheme. (See, e.g.,
 6 *Hydroxycut, supra*, 299 F.R.D. at 656 [applying *Emery*]; *Musgrave v. Taylor Farms Pac., Inc.*
 7 (N.D.Cal. Feb. 20, 2019) 2019 U.S.Dist.LEXIS 229391, at *19 [dismissing claims against retailers
 8 based on failure to allege retailers’ responsibility for product representations]; *Tortilla Factory,*
 9 *LLC v. Health-Ade LLC* (C.D.Cal. July 13, 2018) 2018 U.S.Dist.LEXIS 157538, at *32-33
 10 [“courts have uniformly dismissed aiding-and-abetting false advertising claims against
 11 retailers/distributors that are alleged to have done nothing more than sell a deceptively advertised
 12 product that is manufactured and advertised by a third party . . . plaintiff does not identify a single
 13 case in which a court permitted a false advertising claim to proceed against a distributor whose
 14 only alleged wrong was selling a mislabeled product”] [collecting cases]; *In re Jamster Mktg.*
 15 *Litig.* (S.D.Cal. May 22, 2009) 2009 U.S.Dist.LEXIS 43592, at *26 [“the court grants the motion
 16 to dismiss the §17200 and 17500 claims against Wireless Providers to the extent those claims are
 17 based upon the alleged false advertising of Content Providers”].)

18 Here, Mr. Hiradate offers no factual allegations supporting his allegations that Kroger and
 19 Ralphs each made actionable misrepresentations (let alone specific representations that he relied
 20 upon). Mr. Hiradate cannot hold Kroger liable under California’s consumer protection statutes
 21 based on statements made by Ralphs and vice versa, without any allegation of how they both
 22 directly participated in or controlled the purported misrepresentations (whatever they might be).
 23 His failure to plead these fundamental facts further supports dismissal of his claims.

24 **C. Mr. Hiradate Failed to Allege Any Statement Was False When Made.**

25 Mr. Hiradate also fails to allege that any potentially false statement made by either
 26 defendant was knowingly false when made. In particular, because Defendants’ true statements,
 27 e.g., regarding the value of the Gift Card, were apparently rendered false based on the later
 28

1 fraudulent actions of third parties, they were not false when made and cannot give rise to liability
2 under the UCL, FAL, or CLRA.

3 “[W]hile the language of strict liability is frequently repeated in descriptions of the UCL
4 generally, California courts have not applied the language of strict liability” in practice when *true*
5 statements are rendered false based on the later actions of third parties. (See *Kowalsky v. Hewlett-*
6 *Packard Co.* (N.D. Cal. 2011) 771 F.Supp.2d 1156, 1160.) In particular, “where a defendant
7 lacked knowledge of the facts that rendered its representations misleading at the time it made the
8 representations, courts have been unwilling to impose liability” (*Ibid.* [dismissing claims
9 under the CLRA and UCL based on statements made by defendant that were true when made].)

10 Courts have regularly rejected similar attempts by private plaintiffs to make out
11 indistinguishable claims under the UCL, FAL, and CLRA based on true statements rendered false
12 based on the later actions of others. (See *Neu v. Terminix Int’l, Inc.* (N.D.Cal. July 24, 2008) 2008
13 U.S.Dist.LEXIS 60505, at *11 [“Even where Plaintiff has alleged false or misleading statements
14 that could support a fraud claim, she has not alleged facts to support a finding that Defendants
15 knew that those statements were false when made. Plaintiff’s California Business and Professions
16 Code §§ 17200 and 17500 and California Civil Code § 1750 claims are dismissed without leave to
17 amend.”]; *Kowalsky*, 771 F Supp.2d at p. 1162 [“it seems that HP eventually became aware of the
18 alleged problems with the 8500 Printer, but Plaintiff has not pled sufficient facts to suggest that
19 HP had knowledge of that basic fact at the time that it marketed”]; *Klein v. Earth Elements, Inc.*
20 (1997) 59 Cal.App.4th 965, 970 [“The public is not likely to be deceived by Earth Elements’
21 unintentional distribution of unmerchantable pet food. While the customer buying ‘Nature’s
22 Recipe’ would anticipate that the product was pet-edible, that same customer would not
23 be *deceived* when the food turned out to be contaminated.”].)

24 Here, Mr. Hiradate apparently concedes that the Gift Card had no value because a third-
25 party enacted a fraud on him and Ralphs after the Gift Card was printed and put on the shelves.
26 (Compl. ¶¶ 10-11.) When Mr. Hiradate complained, a Ralphs’ employee assisted him and
27 provided recourse to receive a refund. (*Id.* ¶¶ 10-13.) The Ralphs employee even “assisted him in
28 submitting the documents via fax” to facilitate his refund. (*Id.* ¶ 13.) Despite Mr. Hiradate’s

1 vague and distorted efforts to suggest that Defendants were or should have been aware of the third
2 parties' fraud based on prior incidents, there are no allegations in the Complaint that Defendants
3 were aware of the third-party schemes prior to the printing of any statement that Mr. Hiradate
4 could have relied upon. The Gift Cards were printed and labeled well before the December 21,
5 2019, incident, and the purported staff meeting that morning to address that issue. (*Id.* ¶¶ 9, 11.)

6 The purpose of California's consumer protection statutes is to protect consumers from
7 preventable, deceptive, and sharp practices. It is not the tool to remedy harms caused by the
8 actions of third-party fraudsters who take independent steps to render true statements false by their
9 malicious actions.

10 **IV. CONCLUSION**

11 Based on the deficiencies identified above, the Court should dismiss Mr. Hiradate's UCL,
12 CLRA, and FAL claims with prejudice.

13
14 Dated: July 7, 2021

DAVIS WRIGHT TREMAINE LLP

15
16 By: 

Jacob M. Harper

17
18 *Attorneys for Defendants*
19 *Ralphs Grocery Company*
20 *and The Kroger Co.*
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PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On July 7, 2021, I served the foregoing document(s) described as:

**DEFENDANTS' NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES AND PERMANENT INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES**

by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq. Joshua A. Fields, Esq. Kirtland & Packard LLP 1638 South Pacific Coast Highway Redondo Beach, CA 90277 mlk@kirtlandpackard.com jf@kirtlandpackard.com	Attorneys for Plaintiff Yosuke Hiradate
---	---

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on July 7, 2021, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Frank M. Romero

Print Name

Frank M. Romero

Signature



Journal Technologies Court Portal

Make a Reservation

YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.

Case Number: 21TRCV00301 Case Type: Civil Unlimited Category: Other Commercial/Business Tort (not fraud/ breach of contract)

Date Filed: 2021-04-19 Location: Torrance Courthouse - Department B

Reservation

Case Name:

YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.

Case Number:

21TRCV00301

Type:

Demurrer - without Motion to Strike

Status:

RESERVED

Filing Party:

Ralph's Grocery Company (Defendant)

Location:

Torrance Courthouse - Department B

Date/Time:

12/21/2021 8:30 AM

Number of Motions:

1

Reservation ID:

299213979011

Confirmation Code:

CR-P7WSABHQSU3CVKHJ4

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment

Amount:

\$446.96

Type:

Visa

Account Number:

XXXX8367

Authorization:

047152

Print Receipt

Reserve Another Hearing

View My Reservations

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Torrance Courthouse Mailing Address: 825 Maple Avenue City, State and Zip Code: Torrance CA 90503	
SHORT TITLE: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 21TRCV00301

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 4464499_2021_07_07_21_29_26_883_4
Submission Number: 21LA03787819
Court Received Date: 07/07/2021
Court Received Time: 3:12 pm
Case Number: 21TRCV00301
Case Title: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.
Location: Torrance Courthouse
Case Type: Civil Unlimited
Case Category: Other Commercial/Business Tort (not fraud/ breach of contract)
Jurisdictional Amount: Over \$25,000
Notice Generated Date: 07/09/2021
Notice Generated Time: 11:20 am

Documents Electronically Filed/Received

Status

Demurrer - without Motion to Strike	Accepted
Declaration (name extension)	Accepted
Order (name extension)	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect

Contact: Legal Connect

Phone: (800) 909-6859

EXHIBIT 11

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
3 *jharper@dwt.com*
4 James H. Moon (SBN 268215)
5 *jamesmoon@dwt.com*
6 865 South Figueroa Street, Suite 2400
7 Los Angeles, California 90017-2566
8 Telephone: (213) 633-6800
9 Facsimile: (213) 633-6899

10 *Attorneys for Defendants*
11 *Ralphs Grocery Company*
12 *and The Kroger Co.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHWEST DISTRICT

YOSUKE HIRADATE,

Plaintiff,

vs.

RALPHS GROCERY COMPANY, an Ohio
Corporation; THE KROGER COMPANY, an
Ohio Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 21TRCV00301
Assigned to the Hon. Gary Y. Tanaka

**DECLARATION OF JACOB M. HARPER
IN SUPPORT OF DEFENDANTS'
DEMURRER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES AND
PERMANENT INJUNCTIVE RELIEF**

*[Demurrer and Proposed Order Filed
Concurrently]*

Date: December 21, 2021
Time: 8:30 a.m.
Dept.: B

Reservation ID No. 299213979011

Action Filed: April 19, 2021
Trial Date: N/A

DECLARATION OF JACOB M. HARPER

I, Jacob M. Harper, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am a partner in the law firm of Davis Wright Tremaine LLP, counsel of record for defendants Ralphs Grocery Company and The Kroger Company (collectively, Defendants). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath. I make this declaration in support of the concurrently filed Demurrer to the Complaint of plaintiff Yosuke Hiradate.

2. Defendants were served with the Complaint of plaintiff Yosuke Hiradate on April 23, 2021. On or about May 21, 2021, counsel for Mr. Hiradate provided a two-week extension until June 7, 2021, and we set a date to meet and confer on Defendants' anticipated demurrer in response to the complaint. I called counsel for Mr. Hiradate on that date but could not reach him. Defendants submitted a declaration under Code of Civil Procedure section 430.41 on June 4, 2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of July 2021, at Los Angeles, California.



Jacob M. Harper

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

ON JULY 7, 2021, DECLARATION OF JACOB M. HARPER IN SUPPORT OF DEFENDANTS' DEMURRER TO PLAINTIFF'S COMPLAINT FOR DAMAGES AND PERMANENT INJUNCTIVE RELIEF

by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq. Joshua A. Fields, Esq. Kirtland & Packard LLP 1638 South Pacific Coast Highway Redondo Beach, CA 90277 mlk@kirtlandpackard.com jf@kirtlandpackard.com	Attorneys for Plaintiff Yosuke Hiradate
---	---

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on July 7, 2021, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Frank M. Romero

Print Name

Frank M. Romero

Signature



Journal Technologies Court Portal

Make a Reservation

YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.

Case Number: 21TRCV00301 Case Type: Civil Unlimited Category: Other Commercial/Business Tort (not fraud/ breach of contract)

Date Filed: 2021-04-19 Location: Torrance Courthouse - Department B

Reservation

Case Name:

YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.

Case Number:

21TRCV00301

Type:

Demurrer - without Motion to Strike

Status:

RESERVED

Filing Party:

Ralph's Grocery Company (Defendant)

Location:

Torrance Courthouse - Department B

Date/Time:

12/21/2021 8:30 AM

Number of Motions:

1

Reservation ID:

299213979011

Confirmation Code:

CR-P7WSABHQSU3CVKHJ4

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment

Amount:

\$446.96

Type:

Visa

Account Number:

XXXX8367

Authorization:

047152

Print Receipt

Reserve Another Hearing

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EXHIBIT 12

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Michael Louis Kelly - SBN 82063 / Joshua A. Fields - SBN 242938 FIRM NAME: KIRTLAND & PACKARD LLP STREET ADDRESS: 1638 South Pacific Coast Highway CITY: Redondo Beach STATE: CA ZIP CODE: 90277 TELEPHONE NO.: (310) 563-1000 FAX NO.: (310) 536-1001 E-MAIL ADDRESS: jf@kirtlandpackard.com ATTORNEY FOR (name): Yosuke Hiradate	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Avenue MAILING ADDRESS: CITY AND ZIP CODE: Torrance 90503 BRANCH NAME: Torrance Courthouse	
Plaintiff/Petitioner: Yosuke Hiradate Defendant/Respondent: Ralph's Grocery Company, et al.	
REQUEST FOR <input checked="" type="checkbox"/> Entry of Default <input type="checkbox"/> Clerk's Judgment (Application) <input type="checkbox"/> Court Judgment	CASE NUMBER: 21TRCV00301
Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.) (see CIV-105)	

1. TO THE CLERK: On the complaint or cross-complaint filed

a. on (date): April 19, 2021

b. by (name): Yosuke Hiradate

c. ☒ Enter default of defendant (names):

Ralph's Grocery Company, The Kroger Company

d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)

e. ☐ Enter clerk's judgment(1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.(2) ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)(3) ☐ for default previously entered on (date):

2. Judgment to be entered.

	Amount	Credits acknowledged	Balance
a. Demand of complaint	\$	\$	\$
b. Statement of damages*			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$	\$	\$

g. Daily damages were demanded in complaint at the rate of: \$ per day beginning (date):

(* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

3. ☐ (Check if filed in an unlawful detainer case.) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date:

July 8, 2021

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)
FOR COURT
USE ONLY

- (1) ☐ Default entered as requested on (date):
- (2) ☐ Default NOT entered as requested (state reason):

Clerk, by _____, Deputy

Page 1 of 2

CIV-100

Plaintiff/Petitioner: Yosuke Hiradate Defendant/Respondent: Ralph's Grocery Company, et al.	CASE NUMBER: 21TRCV00301
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4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☒ did not or compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state:

- a. Assistant's name: c. Telephone no.:
b. Street address, city, and zip code: d. County of registration:
e. Registration no.:
f. Expires on (date):

5. ☒ **Declaration under Code Civ. Proc., § 585.5 (for entry of default under Code Civ. Proc., § 585(a)).** This action

- a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a. ☐ **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):
b. ☒ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
(1) Mailed on (date): July 8, 2021 (2) To (specify names and addresses shown on the envelopes):
Davis, Wright & Tremaine LLP, ATTN: Jacob M. Harper, Esq.
865 South Figueroa St., Suite 2400, Los Angeles, CA 90017

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: July 8, 2021

Joshua A. Fields

(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

7. **Memorandum of costs (required if money judgment requested).** Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$
b. Process server's fees \$
c. Other (specify): \$
d. \$
e. **TOTAL** \$
f. ☐ Costs and disbursements are waived.

g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. **Declaration of nonmilitary status (required for a judgment).** No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code sections 400 and 402(f).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 8, 2021

Joshua A. Fields

(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

PROOF OF SERVICE

[CCP §§1010.6, 1011, 1013, 1013a, 2015.3; CRC 2.251, 2.306]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1638 South Pacific Coast Highway, Redondo Beach, California 90277.

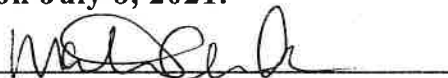
On July 8, 2021, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein: **REQUEST FOR ENTRY OF DEFAULT**

	By ELECTRONIC SERVICE pursuant to CCP 1010.6(a)(6), CRC 2.251, and the COVID-19 emergency and by agreement of all parties, on July 8, 2021, from the electronic notification address of the undersigned, I caused the within document(s) to be electronically served on the parties listed below, and the transmission was reported as complete and without error.
✓	U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

PERSONS OR PARTIES SERVED:

<u>Counsel for Defendants.</u> Jacob M. Harper Davis Wright Tremaine LLP Partner, Complex Business Litigation and Class Action Defense 865 South Figueroa Street, Suite 2400 Los Angeles, California 90017 Tel: (213) 633-6863 Fax: (213) 633-6899 Email: jharper@dwt.com	
---	--

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 8, 2021.



Marti F. Clark

EXHIBIT 13

<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</p>	<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503</p>	<p align="center">FILED Superior Court of California County of Los Angeles 07/13/2021</p>
<p>PLAINTIFF/PETITIONER: Yosuke Hiradate</p>	<p align="center">Sherri R. Carter, Executive Officer / Clerk of Court By: <u> M. Fondon </u> Deputy</p>
<p>DEFENDANT/RESPONDENT: Ralph's Grocery Company et al</p>	
<p align="center">CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 21TRCV00301</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Request for Entry of Default / Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Torrance, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Michael Kelly
Kirtland & Packard LLP
1638 South Pacific Coast Hwy.
Redondo Beach, CA 90277

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 07/13/2021

By: M. Fondon
Deputy Clerk

CERTIFICATE OF MAILING

EXHIBIT 14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles Branch Name: Torrance Courthouse Mailing Address: 825 Maple Avenue City, State and Zip Code: Torrance CA 90503	
SHORT TITLE: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al. NOTICE OF REJECTION OF ELECTRONIC FILING	CASE NUMBER: 21TRCV00301

The electronic filing described by the summary data below was reviewed and rejected by the Superior Court of California, County of Los Angeles.

Documents Electronically Rejected

Request for Entry of Default / Judgment

This electronic filing was returned based on the following reason(s):

The Defendant's have responded to the case.

EXHIBIT 15

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
3 *jharper@dwt.com*
4 James H. Moon (SBN 268215)
5 *jamesmoon@dwt.com*
6 865 South Figueroa Street, Suite 2400
7 Los Angeles, California 90017-2566
8 Telephone: (213) 633-6800
9 Facsimile: (213) 633-6899

10 *Attorneys for Defendants*
11 *Ralphs Grocery Company*
12 *and The Kroger Co.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHWEST DISTRICT

YOSUKE HIRADATE,

Plaintiff,

vs.

RALPHS GROCERY COMPANY, an Ohio
Corporation; THE KROGER COMPANY,
an Ohio Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 21TRCV00301

Assigned to the Hon. Gary Y. Tanaka

**DEFENDANTS' NOTICE REGARDING
ORDER CONTINUING CASE
MANAGEMENT CONFERENCE AND
HEARING ON DEMURRER**

Action Filed: April 19, 2021

Trial Date: N/A

1 **TO THE COURT AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendants have been informed by the Court that the
3 (1) case management conference set for October 19, 2021 (reset to December 21, 2021), and
4 (2) hearing on Defendants' Demurrer set for December 21, 2021, at 8:30 a.m., have both been
5 continued until **February 2, 2022, at 8:30 a.m.** in Department B due to the unavailability of the
6 Court on December 21, 2021.

7
8 Date: September 22, 2021

DAVIS WRIGHT TREMAINE, LLP

9
10 

11 _____
James H. Moon

12 *Attorneys for Defendants Ralphs Grocery*
13 *Company and The Kroger Company*
14
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PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On September 22, 2021, I served the foregoing document(s) described as:
**DEFENDANTS' NOTICE REGARDING ORDER CONTINUING CASE
MANAGEMENT CONFERENCE AND HEARING ON DEMURRER**
by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq. Joshua A. Fields, Esq. Kirtland & Packard LLP 1638 South Pacific Coast Highway Redondo Beach, CA 90277 mlk@kirtlandpackard.com jf@kirtlandpackard.com	Attorneys for Plaintiff Yosuke Hiradate
---	---

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on September 22, 2021, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Frank M. Romero

Print Name

Frank M. Romero

Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Torrance Courthouse Mailing Address: 825 Maple Avenue City, State and Zip Code: Torrance CA 90503	
SHORT TITLE: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 21TRCV00301

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 4747426_2021_09_22_19_11_09_824_9
Submission Number: 21LA04116792
Court Received Date: 09/22/2021
Court Received Time: 12:15 pm
Case Number: 21TRCV00301
Case Title: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.
Location: Torrance Courthouse
Case Type: Civil Unlimited
Case Category: Other Commercial/Business Tort (not fraud/ breach of contract)
Jurisdictional Amount: Over \$25,000
Notice Generated Date: 09/22/2021
Notice Generated Time: 3:22 pm

Documents Electronically Filed/Received

Status

Notice (name extension)

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
Contact: Legal Connect
Phone: (800) 909-6859

EXHIBIT 16

Michael Louis Kelly, State Bar No. 82063
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Counsel for Plaintiff Yoshi Hiradate

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

YOSHI HIRADATE,

Plaintiff,

v.

RALPH'S GROCERY COMPANY, an Ohio
Corporation; THE KROGER COMPANY, an
Ohio Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 21TRCV00301

Assigned to the Hon. Gary Y. Tanaka

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND PERMANENT
INJUNCTIVE RELIEF:**

1. Violation of California's Unfair Competition Law ("UCL"); Bus. & Prof. Code § 17200 *et seq.*
2. Violation of California's Consumer Legal Remedies Act ("CLRA"); Cal. Civil Code §1750 *et seq.*
3. Violation of California's False Advertising Law ("FAL"), Bus & Prof. Code § 17500 *et seq.*
4. Unjust Enrichment

JURY TRIAL DEMANDED

1 Plaintiff YOSHI HIRADATE ("Plaintiff" or "Mr. Hirdate") alleges as follows:

2 **THE PARTIES**

3 1. Plaintiff, at all relevant times herein, was and is a citizen and resident of Los Angeles
4 County, California. On December 21, 2019, Plaintiff visited Ralph's Grocery Store located at 1770
5 Carson Street in Torrance, California, and purchased a \$500 Visa Gift Card, as confirmed on the
6 receipt he received. Plaintiff also incurred a \$5.95 Gift Card activation fee. As soon as Plaintiff
7 returned home, he opened the Gift Card package and checked the balance for the first time, prior to
8 using the Gift Card. Plaintiff was shocked to learn the Gift Card he had just paid Ralph's \$500 for
9 actually had zero value. Plaintiff quickly returned to the Ralph's store that day to get an explanation
10 for why the Gift Card had no value when he first accessed it. There, Plaintiff spoke to the Store
11 Manager, who specifically informed him the Gift Card had been tampered with prior to purchase,
12 which according to the Store Manager involved someone's placement of a photo copy of another gift
13 card over the Gift Card Plaintiff had purchased, prior to check out at Ralph's, so the bar card for the
14 other gift card would be visible to receive any money added to the card by the Ralph's cashier at check
15 out. The Store Manager also informed Plaintiff that a staff member meeting regarding this exact
16 problem had been held that very same morning at the store, because valueless gift card sales at Ralph's
17 were apparently a regular, recurring problem. Additionally, a former assistant manager from another
18 Ralph's store also told Plaintiff gift card tampering has been an ongoing problem for years at Ralph's
19 and that Ralph's is aware of this precise issue happening frequently at its stores. Thereafter, despite
20 his efforts, neither Ralph's nor the bank returned Plaintiff's money, and he thus incurred a \$500
21 payment to Ralph's in addition to the \$5.95 activation fee for nothing in return.

22 2. Plaintiff is informed and believes, and upon such information and belief alleges, that
23 defendant Ralph's Grocery Company ("RALPH'S") is an Ohio Corporation with its principal place of
24 business in Cincinnati, Ohio. RALPH'S is registered to do business in California and operates in Los
25 Angeles County, where its local headquarters are in Compton, California. RALPH'S is a multistate
26 corporation that operates a chain of grocery stores, selling goods to consumers throughout the country.

27 3. Plaintiff is informed and believes, and upon such information and belief alleges, that
28 defendant The Kroger Company ("KROGER") is an Ohio Corporation with its principal place of

1 business in Cincinnati, Ohio. KROGER is registered to do business in California and operates in Los
2 Angeles County, where its local headquarters are in Compton, California. KROGER operates, either
3 directly or through its subsidiaries such as defendant RALPH'S, which it wholly owns and operates,
4 supermarkets and multi-department stores nationwide. KROGER and RALPH'S are hereinafter
5 collectively referred to as "Defendants".

6 4. Plaintiff does not know the true names or capacities of the persons or entities sued
7 herein as DOES 1-50, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff
8 is informed and believes, and upon such information and belief alleges, that each of the DOE
9 Defendants is in some manner legally responsible for the damages suffered by Plaintiff as alleged
10 herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these
11 Defendants when they have been ascertained, along with appropriate charging allegations, as may be
12 necessary.

13 5. At all times herein mentioned, Defendants, and each of them, were the agents,
14 principals, servants, employees, and subsidiaries of each of the remaining Defendants, and were at all
15 times acting within the purpose and scope of such agency, service, and employment, and directed,
16 consented, ratified, permitted, encouraged, and approved the acts of each remaining Defendant.

17 JURISDICTION AND VENUE

18 6. This Court has jurisdiction over all causes of action asserted herein under the California
19 Constitution.

20 7. Venue is proper in this County because the acts and occurrences alleged herein occurred
21 in this County, and pursuant to California *Civil Code* § 1780(d) because Defendants do business here.

22 FACTUAL ALLEGATIONS

23 8. This action arises out of RALPH's practice of selling gift cards to California consumers
24 for specified monetary values where the gift cards actually have no value and are thus worthless to the
25 consumers. Despite RALPH'S knowledge of this issue, RALPH'S sold Mr. Hiradate a worthless gift
26 card for which he paid a substantial amount of money to RALPH'S.

27 9. On December 21, 2019, Plaintiff visited the RALPH'S store at 1770 Carson Street in
28 Torrance, California, where he saw a Visa Gift Card available for sale, with packaging that indicated it

1 could be purchased in “Any Amount,” between \$20 and \$500” but that it had “NO VALUE UNTIL
2 PAID FOR AND ACTIVATED AT THE REGISTER.” (Emphasis added) At the RALPH’S STORE,
3 Plaintiff purchased a \$500 Visa Gift Card, by requesting the \$500 be added to the Gift Card by the
4 Ralph’s employee at the cash register, who agreed to do so, and the amount of the transaction was
5 confirmed on the receipt Plaintiff received, which also demonstrated the Gift Card was activated.
6 Plaintiff also incurred a \$5.95 activation fee for the Gift Card. As soon as Plaintiff returned home after
7 making this purchase, he opened the Gift Card package and checked the balance for the first time, prior
8 to using the Gift Card. Plaintiff was shocked to learn the Gift Card he had just paid RALPH’S \$500
9 for, in addition to the \$5.95 activation fee, actually had zero value.

10 10. Plaintiff quickly returned to the RALPH’S store on the same day to get an explanation
11 for why the Gift Card had no value when he first attempted to access it. There, Plaintiff spoke to the
12 Store Manager, Stephanie, who told him the Gift Card had been tampered with prior to purchase.
13 Stephanie also told Plaintiff she would call the Gift Card merchant in order to file a claim for gift card
14 fraud. After Stephanie filed the claim on that date, she was apparently provided a case number and 10
15 digit ID which she wrote on Plaintiff’s Gift Card receipt. Stephanie also told Plaintiff on that same
16 date the scenario involved someone’s placement of a photo copy of another gift card over the Gift Card
17 Plaintiff had purchased, prior to check out at RALPH’S, so the bar card for the other gift card would be
18 visible to receive any money added to the card by the RALPH’S cashier at check out.

19 11. Stephanie also informed Plaintiff during their conversation that a staff member meeting
20 regarding this exact problem had been held that very same morning at the store. There, staff members
21 at the RALPH’S store were apparently instructed to check for any of the detectable signs of tampering
22 on any gift cards RALPH’S sold, such as different textures between a valid card with ridges at the bar
23 code area and one that had been tampered with and had no such ridges. Additionally, a former
24 assistant manager from another RALPH’S store in the area named Donald, who Plaintiff also spoke to
25 that night, also told him gift card tampering has been an on-going problem for years at RALPH’S, that
26 he believes the tampering is an inside job, i.e. that someone at RALPH’S was participating in the
27 tampering, and that RALPH’S is aware of this precise issue happening at its stores such as the one in
28 Torrance.

1 12. Thereafter, Stephanie the RALPH'S Store Manager told Plaintiff he needed to call the
2 gift card company to request a new gift card, and then after calling, he would need to fax a copy of the
3 receipt, gift card, the tampering gift card number (i.e. the photo with a gift card number that was placed
4 over Plaintiff's gift card prior to his purchase of it at RALPH'S), and that Plaintiff would then receive
5 a new gift card within a few weeks. That night, Plaintiff tried to reach out to the Gift Card merchant
6 several times at the phone number on the back of the card, in order to attempt to have this issue
7 addressed but, despite several attempts, could not reach a service associate or anyone in management
8 at the Gift Card merchant to resolve this matter.

9 13. Thereafter, that same night Plaintiff returned to the RALPH'S store in Torrance where
10 Stephanie the Store Manager assisted him in submitting the documents via fax including the receipt
11 (with her writing of the case number and 10 digit ID), a photo copy of the gift card, a photo copy of the
12 package including the false bar code from the gift card, Plaintiff's photo ID and contact information.
13 Shortly thereafter, on a later date, as Stephanie the Store Manager had also suggested, Plaintiff called
14 the 1-866-544-8062 phone number on the activation status receipt RALPH'S gave him, after his
15 purchase, but no one ever answered his multiple calls and there was no messaging system that would
16 allow him to leave a voicemail message. To date, Plaintiff received no response from the gift card
17 merchant or a replacement card with the value of \$500 and the activation fee waived, despite his
18 efforts, and Defendants also have not compensated Plaintiff for the loss.

19 14. Thus, RALPH'S knew gift cards such as the one Plaintiff purchased are subject to
20 tampering which can render them worthless, yet it still sold the Gift Card Plaintiff purchased to him
21 and retained \$505.95 of Plaintiff's money, despite that Plaintiff received no value in return whatsoever.

22 15. Subsequently, Plaintiff has learned of a number of California consumers who have been
23 similarly affected by purchasing a gift card at RALPH'S which had been tampered with prior to
24 purchase.

25 16. Defendants should not be selling these gift cards, or be allowed to sell these gift cards at
26 all, considering their actual knowledge of the pervasive tampering issue at RALPH's stores, and that
27 consumers such as Plaintiff end up having purchased gift cards with no value at all.

FIRST CAUSE OF ACTION

Business & Professions Code § 17200 et seq.

(Violation of Unfair Competition Law)

(By Plaintiff Against Defendants RALPH’S and KROGER and Does 1-50)

17. Plaintiff restates and incorporates by reference each and every allegation contained in paragraphs 1-16 as though fully set forth herein.

18. California *Business & Professions Code § 17200 et seq.* (hereafter referred to as the “Unfair Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair competition,” which include any unlawful, unfair, or fraudulent business practice.

19. The UCL imposes strict liability. Plaintiff need not prove that Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – only that such practices occurred.

20. RALPH’S selling of gift cards with specified values when the gift cards actually have zero value to the consumer who purchased them, is an unlawful, unfair, and fraudulent business practice prohibited by the UCL.

21. In carrying out their selling of gift cards for specified values when the gift cards actually have zero value to the consumer who purchased them, Defendants have violated the Consumer Legal Remedies Act, the False Advertising Law, and various other laws, regulations, statutes, and/or common law duties. Defendants’ business practices alleged herein, therefore, are unlawful within the meaning of the UCL.

22. The harm to Plaintiff and members of the public outweighs the utility of Defendants’ practices and, consequently, Defendants’ practices, as set forth fully above, constitute an unfair business act or practice within the meaning of the UCL.

23. Defendants’ practices are additionally unfair because they have caused Plaintiff and members of the public substantial injury, which is not outweighed by any countervailing benefits to consumers or to competition, and which is not an injury the consumers themselves could have reasonably avoided.

24. Defendants’ practices, as set forth above, have misled the general public in the past and

1 will mislead the general public in the future. Consequently, Defendants' practices constitute an
 2 unlawful and unfair business practice within the meaning of the UCL.

3 25. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition
 4 may be brought by any "person ... who has suffered injury in fact and has lost money or property as a
 5 result of such unfair competition." Defendants' misleading business practice – selling gift cards for
 6 specified values when the gift cards actually have zero value to the consumer who purchased them –
 7 directly and seriously injured Plaintiff and other members of the public who were thus deprived of
 8 their property rights.

9 26. The unlawful, unfair and fraudulent business practices of Defendants are ongoing and
 10 present a continuing threat that members of the public will be misled into believing they are purchasing
 11 gift cards for specified values but, like Plaintiff, will be deprived of that value and damaged
 12 financially.

13 27. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief
 14 ordering Defendants to cease this unfair business practice, as well as disgorgement and restitution of
 15 the money Defendants wrongfully obtained from him associated with its unfair business practice.

16 **SECOND CAUSE OF ACTION**

17 **Civil Code § 1750 et seq.**

18 **(Violation of the Consumer Legal Remedies Act)**

19 **(By Plaintiff Against RALPH'S and KROGER and Does 1-50)**

20 28. Plaintiff restates and incorporates by reference each and every allegation contained in
 21 paragraphs 1-27 as though fully set forth herein.

22 29. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a
 23 non-exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or
 24 business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-
 25 declared purpose is to protect consumers against these unfair and deceptive business practices, and to
 26 provide efficient and economical procedures to secure such protection. Cal. Civ. Code § 1760. The
 27 CLRA was designed to be liberally construed and applied in favor of consumers to promote its
 28 underlying purposes. *Id.*

30. More specifically, Plaintiff alleges that Defendants have violated paragraphs 4, 5, 9 and 14 of *Civil Code* Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth herein. Defendants' unfair and deceptive business practices in carrying out the selling of gift cards for specified values when the gift cards actually have zero value to the consumer who purchased them, as described herein, were and are intended to and did and do result in Plaintiff, and other members of the public, being deprived of their right to a gift card with the value they paid for actually on it, in violation of the CLRA. Cal. Civ. Code § 1770 *et seq.* Plaintiff, and other members of the public, were damaged in that they paid purchase prices for gift cards higher than the zero value they received on the cards.

31. As a result of Defendants' unfair and/or deceptive business practices, Plaintiff and other members of the public, as a result of the business practice alleged herein, have suffered damage in that they lost a vested right in gift cards at specified values, because Defendants misrepresented that the offers for sale conferred rights to Plaintiff, and other members of the public, which they did not. Plaintiff seeks and is entitled to an order permanently enjoining Defendants from continuing to engage in the unfair and deceptive business practices alleged herein.

32. Pursuant to section 1782 of the CLRA, Plaintiff has notified Defendants in writing of the particular violations of Section 1770 of the CLRA Plaintiff alleges Defendants committed. In response, Defendants have not agreed to provide the monetary compensation Plaintiff demanded.

THIRD CAUSE OF ACTION

Business & Professions Code § 17500, et seq.

(Violation of the False Advertising Law)

(By Plaintiff Against RALPH'S and KROGER and Does 1-50)

33. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-32 as if fully set forth herein.

34. California *Business & Professions Code* § 17500 provides that “[I]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising

1 device, or by public outcry or proclamation, or in any other manner or means whatever ... any
 2 statement ... which is untrue or misleading, and which is known, or which by exercise of reasonable
 3 care should be known, to be untrue or misleading...”

4 35. Defendants misled consumers by selling gift cards that could be purchased in “Any
 5 Amount,” between \$20 and \$500” and according to the packaging have value once “*PAID FOR AND*
 6 *ACTIVATED AT THE REGISTER*,” when the gift cards actually have zero value to the consumers who
 7 purchased them at RALPH’S. (Emphasis added)

8 36. As a direct and proximate result of Defendants’ misleading and false advertising,
 9 Plaintiff, along with other members of the public, has suffered injury in fact and has lost money and/or
 10 property.

11 37. The misleading and false advertising described herein presents a continuing threat to
 12 Plaintiff, and other members of the public, in that Defendants persists and continue to engage in these
 13 practices, and will not cease doing so unless and until forced to do so by this Court. Defendants’
 14 conduct will continue to cause irreparable injury to members of the public unless enjoined or
 15 restrained, permanently.

16 **FOURTH CAUSE OF ACTION**

17 **(Unjust Enrichment)**

18 **(By Plaintiff Against RALPH’S and KROGER and Does 1-50)**

19 38. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
 20 paragraphs 1-37 as if fully set forth herein.

21 39. When Plaintiff purchased the Visa Gift Card from the Ralph’s Grocery Store located at
 22 1770 Carson Street in Torrance, California, he paid \$500 for the Gift Card and also incurred a \$5.95
 23 activation fee. Thus, Defendants received a \$505.95 benefit from the Gift Card transaction with
 24 Plaintiff, who in return received a valueless Gift Card from the RALPH’S store. Despite his numerous
 25 requests, Defendants retained the \$505.95 benefit they received from Plaintiff, at his sole expense, and
 26 the \$505.95 has not been otherwise returned to him by Defendants, who have therefore been unjustly
 27 enriched as a result of their business practice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. For restitution and disgorgement of the money and property wrongfully obtained by Defendants by means of their herein-alleged unlawful, unfair and fraudulent business practices;
2. An award of general damages according to proof;
3. An award of special damages according to proof;
4. Exemplary damages in light of Defendants' fraud, malice, and conscious disregard for the rights of Plaintiff;
5. Injunctive relief, including without limitation, public injunctive relief, in the form of a permanent injunction enjoining Defendants from engaging in the unlawful, unfair, and fraudulent business practices alleged herein;
6. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation, the CLRA, the common law private attorney general doctrine, and *Code of Civil Procedure* § 1021.5;
7. For costs of suit;
8. For such other and further relief as the court deems just and proper.

Dated: January 20, 2022

KIRTLAND & PACKARD, LLP

By: /s/ Joshua A. Fields
MICHAEL LOUIS KELLY
JOSHUA A. FIELDS

Counsel for Plaintiff Yoshi Hiradate

DEMAND FOR JURY TRIAL

Plaintiff YOSHI HIRADATE hereby demands a jury trial.

Dated: January 20, 2022

KIRTLAND & PACKARD, LLP

By: /s/ Joshua A. Fields
MICHAEL LOUIS KELLY
JOSHUA A. FIELDS

Counsel for Plaintiff Yoshi Hiradate

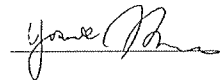
DECLARATION OF PROPER VENUE BY YOSUKE HIRADATE

I, Yosuke Hiradate, declare as follows:

1. I am a Plaintiff in this action, and I am a resident and citizen of the State of California. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code § 1780(d) in that Los Angeles County is a county where Defendant does business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Torrance, California on April 15, 2021.



Yosuke Hiradate

PROOF OF SERVICE

[CCP §§1010.6, 1011, 1013, 1013a, 2015.3; CRC 2.251, 2.306]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1638 South Pacific Coast Highway, Redondo Beach, California 90277.

On January 20, 2022, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein: **FIRST AMENDED**

COMPLAINT FOR DAMAGES AND PERMANENT INJUNCTIVE RELIEF

By ELECTRONIC SERVICE pursuant to CCP 1010.6(a)(6), CRC 2.251, and the COVID-19 emergency and by agreement of all parties, on January 20, 2022, from the electronic notification address of the undersigned, I caused the within document(s) to be electronically served on the parties listed below, and the transmission was reported as complete and without error.

✓ **U.S. MAIL:** The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

PERSONS OR PARTIES SERVED:Counsel for Defendants

Jacob M. Harper | Davis Wright Tremaine LLP
Partner, Complex Business Litigation and
Class Action Defense
865 South Figueroa Street, Suite 2400
Los Angeles, California 90017
Tel: (213) 633-6863 | Fax: (213) 633-6899
Email: jharper@dwt.com

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 20, 2022.

Marti F. Clark

EXHIBIT 17

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael Louis Kelly-82063 / Joshua A. Fields-242938 KIRTLAND & PACKARD LLP 1638 S. Pacific Coast Hwy., Redondo Beach, CA 90277 TELEPHONE NO.: 310-536-1000 FAX NO. (Optional): 310-536-1001 E-MAIL ADDRESS: mlk@kirtlandpackard.com ATTORNEY FOR (Name): Plaintiff Yosuke Hiradate	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Ave MAILING ADDRESS: CITY AND ZIP CODE: Torrance 90503 BRANCH NAME: Torrance Courthouse	
PLAINTIFF/PETITIONER: Yosuke Hiradate DEFENDANT/RESPONDENT: Ralph's Grocery Company and The Kroger Company, et. al.	
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: 21TRCV00301
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: February 2, 2022 Time: 8:30 a.m. Dept.: B Div.: Room: Address of court (if different from the address above): <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name):	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (answer one):
 - a. ☒ This statement is submitted by party (name): Yosuke Hiradate
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date): April 19, 2021
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service** (to be answered by plaintiffs and cross-complainants only)
 - a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
 Claims for violations of Bus. & Prof. Code 17200, et seq. ("UCL"), Civil Code 1750, et seq. ("CLRA"), and Bus. & Prof. Code 17500, et seq. ("FAL"), and unjust enrichment against Ralph's & Kroger for selling a valueless gift card but charging \$505.95.

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PLAINTIFF/PETITIONER: Hiradate	CASE NUMBER: 21TRCV0C301
DEFENDANT/RESPONDENT: Ralph's	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Defendants Ralph's Grocery and Kroger Co. sold Plaintiff a valueless gift card while charging him \$500 for the supposed card value and \$5.95 to activate it. Defendants did not return Plaintiff's money, which they've unlawfully retained. Plaintiff seeks a permanent public injunction enjoining Defendants from engaging in this unfair and unlawful business practice & damages.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. ☐ The trial has been set for *(date)*:

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
See attached Dates of Trial and Unavailability.

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a. ☒ days *(specify number)*: 3

b. ☐ hours (short causes) *(specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 of the California Rules of Court for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation** (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

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PLAINTIFF/PETITIONER: Hiradate	CASE NUMBER: 21TRCV00301
DEFENDANT/RESPONDENT: Ralph's	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

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PLAINTIFF/PETITIONER:	Hiradate	CASE NUMBER:	21TRCV00301
DEFENDANT/RESPONDENT:	Ralph's		

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
- Motion for preliminary public injunctive relief under UCL, FAL, and CLRA.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff	Percipient depositions	Per Code
Plaintiff	Written discovery (RFAs, Rogs, RFPs)	Per Code
Plaintiff	Expert discovery	Per Code

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

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PLAINTIFF/PETITIONER:	Hiradate	CASE NUMBER:	21TRCV00301
DEFENDANT/RESPONDENT:	Ralph's		

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*
- b. ☐ After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*

20. Total number of pages attached *(if any)*: 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 1/24/22

Joshua A. Fields

 (TYPE OR PRINT NAME)

▶ s/ Joshua A. Fields

 (SIGNATURE OF PARTY OR ATTORNEY)

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

MLK-DATES OF TRIAL AND UNAVAILABILITY

Rev 1/24/22: 128952

DATE	CASE
January 31, 2022	Sheer v. City of CC - Mediation
February 2, 2022	Ortega v FPU - MSC - Fresno
February 25, 2022	Ortega v FPU - TRC - Fresno
February 28, 2022	Ortega v. FPU - Trial - Fresno
April 25, 2022	Jane Doe 1 v. MBUSD pretrial (USDC)
April 26, 2022	Jane Doe v. English - FSC - LASC
May 3, 2022	Jane Doe 1 v. MBUSD Trial (USDC)
May 10, 2022	Jane Doe v. English - Trial - LASC
June 9, 2022	Sheer v. City of CC - FSC - LASC
June 22, 2022	Silva v. Imagine Schools - MSC - Riverside
June 23, 2022	Sheer v. City of CC - Trial - LASC
July 1, 2022	Silva v. Imagine Schools - Trial - Riverside
September 19, 2022	Elliott v. YMCA - FSC - LASC
October 3, 2022	Elliott v. YMCA - Trial - LASC
October 24-28, 2022	Ortega v. PPB - Arbitration
November 10, 2022	Adle v. Isaab - MSC - Orange County
November 28, 2022	Adle v. Isaab - Trial - Orange County
January 18, 2023	Cruz v. Redondo Beach - FSC - LASC
January 20, 2023	Thompson v. Airbahn - MSC - Orange County
February 1, 2023	Cruz v. Redondo Beach - Trial - LASC
February 21, 2023	Thompson v. Airbahn - Trial - Orange County
May 2, 2023	Aspel v. City of RPV - FSC
May 10, 2023	Jane Doe (Rich-Ortiz) - FSC - LASC
May 16, 2023	Aspel v. City of RPV - Trial
May 16, 2023	Gallucci v. Mosser - FSC
May 24, 2023	Jane Doe (Rich-Ortiz) - Trial - LASC
May 24, 2023	Kanamala v. - FSC - LASC
May 30, 2023	Gallucci v. Mosser - Trial - LASC
June 7, 2023	Kanamala v. - Trial - LASC

PROOF OF SERVICE

[CCP §§1010.6, 1011, 1013, 1013a, 2015.3; CRC 2.251, 2.306]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1638 South Pacific Coast Highway, Redondo Beach, California 90277.

On January 24, 2022, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein: **CASE MANAGEMENT STATEMENT**

	By ELECTRONIC SERVICE pursuant to CCP 1010.6(a)(6), CRC 2.251, and the COVID-19 emergency and by agreement of all parties, on January 24, 2022, from the electronic notification address of the undersigned, I caused the within document(s) to be electronically served on the parties listed below, and the transmission was reported as complete and without error.
✓	U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

PERSONS OR PARTIES SERVED:

<u>Counsel for Defendants.</u> Jacob M. Harper Davis Wright Tremaine LLP Partner, Complex Business Litigation and Class Action Defense 865 South Figueroa Street, Suite 2400 Los Angeles, California 90017 Tel: (213) 633-6863 Fax: (213) 633-6899 Email: jharper@dwt.com	
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 24, 2022.

Marti F. Clark

EXHIBIT 18

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jacob M. Harper (SBN 259463) James H. Moon (SBN 268215) Davis Wright Tremaine LLP 865 S. Figueroa St., Ste. 2400 Los Angeles, CA 90017-2566 TELEPHONE NO.: (213) 633-6800 FAX NO. (Optional): (213) 633-6899 E-MAIL ADDRESS (Optional): jacobharper@dwt.com; jamesmoon@dwt.com ATTORNEY FOR (Name): Defendants Ralph's Grocery Co. & The Kroger Co.		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Ave. MAILING ADDRESS: 825 Maple Ave. CITY AND ZIP CODE: Torrance, CA 90503 BRANCH NAME: Torrance Courthouse			
PLAINTIFF/PETITIONER: YOSUKE HIRADATE DEFENDANT/RESPONDENT: RALPH'S GROCERY CO. <i>et al.</i>			
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: 21TRCV00301	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: February 2, 2022 Time: 8:30 a.m. Dept.: B Div.: Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): James H. Moon			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
- a. ☒ This statement is submitted by party *(name)*: Defendants Ralph's Grocery Co. & The Kroger Co. ("Defendants")
- b. ☐ This statement is submitted **jointly** by parties *(names)*:
2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
- a. The complaint was filed on *(date)*: April 19, 2021
- b. ☐ The cross-complaint, if any, was filed on *(date)*:
3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
- a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
- b. ☐ The following parties named in the complaint or cross-complaint
- (1) ☐ have not been served *(specify names and explain why not)*:
- (2) ☐ have been served but have not appeared and have not been dismissed *(specify names)*:
- (3) ☐ have had a default entered against them *(specify names)*:
- c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and date by which they may be served)*:
4. **Description of case**
- a. Type of case in ☒ complaint ☐ cross-complaint *(Describe, including causes of action)*:
Plaintiff asserts individual claims against Defendants for violation of California's Unfair Competition Law (UCL), Consumers Legal Remedies Act (CLRA), and False Advertising Law (FAL) based on the sale of a \$500 gift card that was allegedly tampered with by third parties prior to the sale.

PLAINTIFF/PETITIONER: YOSUKE HIRADATE	CASE NUMBER: 21TRCV00301
DEFENDANT/RESPONDENT: RALPH'S GROCERY CO. <i>et al.</i>	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Plaintiff filed this action against Defendants to recover the value of a \$500 gift card that he purchased from a Ralphs store and the \$5.95 activation fee. Defendants have demurred and Plaintiff has not opposed the demurrer.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*: No trial date should be set because the case is not yet at issue.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: 3
 b. ☐ hours (short causes) *(specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. E-mail address:
 f. Fax number:
 g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
- (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
- (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
- b. **Referral to judicial arbitration or civil action mediation** *(if available)*.
- (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
- (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- (3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:
 CRC 3.811(b)(1)

PLAINTIFF/PETITIONER: YOSUKE HIRADATE	CASE NUMBER: 21TRCV00301
DEFENDANT/RESPONDENT: RALPH'S GROCERY CO. <i>et al.</i>	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

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PLAINTIFF/PETITIONER: YOSUKE HIRADATE	CASE NUMBER: 21TRCV00301
DEFENDANT/RESPONDENT: RALPH'S GROCERY CO. <i>et al.</i>	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
Defendants filed a demurrer set for hearing on February 2 (the same date and time as the CMC). Plaintiff has not opposed the demurrer.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Defendants	Written Discovery	Per Code
Defendants	Third-Party Discovery	Per Code
Defendants	Depositions	Per Code
Defendants	Expert Discovery	Per Code

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: YOSUKE HIRADATE	CASE NUMBER: 21TRCV00301
DEFENDANT/RESPONDENT: RALPH'S GROCERY CO. <i>et al.</i>	

17. **Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

18. **Other issues**

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*): Defendants filed a demurrer set for hearing on February 2 (the same date and time as the CMC). Plaintiff has not opposed the demurrer.

19. **Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*): If this matter is not dismissed with prejudice, Defendants request a 90-day continuance of the CMC to allow a determination on its pending demurrer, which was not opposed by Plaintiff.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

20. Total number of pages attached (*if* 0
any):

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: January 25, 2022

James H. Moon

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE BY OVERNIGHT MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine, LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566. I am familiar with the practice at my place of business for collection and processing of correspondence for overnight delivery by Overnight Service. Such correspondence will be deposited with a facility regularly maintained for Overnight Service for receipt on the next business day.

On January 25, 2022, I served the following document(s):

CASE MANAGEMENT STATEMENT

by placing a **true copy** in a separate envelope for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq.
Joshua A. Fields, Esq.
Kirtland & Packard LLP
1638 South Pacific Coast Highway
Redondo Beach, CA 90277
mlk@kirtlandpackard.com
jf@kirtlandpackard.com

Attorneys for Plaintiff Yosuke Hiradate

and by sealing the envelope and placing it for collection and delivery by an overnight mail service with delivery fees paid or provided for in accordance with ordinary business practices.

Executed on January 25, 2022, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Frank M. Romero



Print Name

Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Torrance Courthouse Mailing Address: 825 Maple Avenue City, State and Zip Code: Torrance CA 90503	
SHORT TITLE: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 21TRCV00301

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 5248928_2022_01_25_19_17_15_846_6
Submission Number: 22LA00098908
Court Received Date: 01/25/2022
Court Received Time: 11:19 am
Case Number: 21TRCV00301
Case Title: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.
Location: Torrance Courthouse
Case Type: Civil Unlimited
Case Category: Other Commercial/Business Tort (not fraud/ breach of contract)
Jurisdictional Amount: Over \$25,000
Notice Generated Date: 01/25/2022
Notice Generated Time: 11:21 am

Documents Electronically Filed/Received

Status

Case Management Statement	Accepted
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Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
Contact: Legal Connect
Phone: (800) 909-6859

EXHIBIT 19

DAVIS WRIGHT TREMAINE LLP
Jacob M. Harper (SBN 259463)
jharper@dwt.com
James H. Moon (SBN 268215)
jamesmoon@dwt.com
865 South Figueroa Street, Suite 2400
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Facsimile: (213) 633-6899

*Attorneys for Defendants
Ralphs Grocery Company
and The Kroger Co.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHWEST DISTRICT**

YOSUKE HIRADATE,

Plaintiff,

vs.

RALPHS GROCERY COMPANY, an Ohio
Corporation; THE KROGER COMPANY, an
Ohio Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 21TRCV00301
Assigned to the Hon. Gary Y. Tanaka

**DEFENDANTS' NOTICE OF
PLAINTIFF'S NON-OPPOSITION TO
DEMURRER TO PLAINTIFF'S
COMPLAINT**

Date: February 2, 2022
Time: 8:30 a.m.
Dept.: B

Reservation ID No. 299213979011

Action Filed: April 19, 2021
Trial Date: N/A

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants Ralphs Grocery Company and The Kroger Co. (collectively, Defendants) have not received any opposition to its pending Demurrer to the Complaint of Plaintiff Yosuke Hiradate (“Plaintiff”).

On July 7, 2021, Defendants timely filed their Demurrer as reflected on the Court’s docket and served it upon Plaintiff as reflected on the Proof of Service. The hearing on the Demurrer was originally set for December 21, 2021. The hearing was reset by the Court to February 2, 2022, at 8:30 a.m. in Department B. Defendants provided notice of the new hearing date on September 22, 2022, and filed the notice and Proof of Service with the Court that same day. Based on the new hearing date, Plaintiff’s opposition, if any, was required to be filed by January 20, 2022, and served in a manner calculated to ensure delivery by the close of the next business day. (See Code Civ. Proc., § 1005.) Defendants have not been served with any opposition to the Demurrer as of the time of this filing on January 25, 2022. The Court’s docket also does not reflect any filing.

The lack of any timely opposition further supports dismissal of Plaintiff’s claims against Defendants with prejudice. (See *Herzberg v. Cty. of Plumas* (2005) 133 Cal.App.4th 1, 20 [failure to oppose demurrer to cause of action as abandonment of issue]; *Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1083; see also Weil *et al.*, Cal. Practice Guide: Civil Procedure Before Trial (2006) ¶ 9:105.10 [failure to oppose may constitute admission that motion is meritorious: “The purpose is to prevent introduction of legal theories without notice to opposing counsel and the court.”].) For the reasons stated in the Demurrer, the lack of any opposition, and good cause shown, the Court should grant Defendants’ Motion and dismiss Plaintiff’s claims against them with prejudice.

Dated: January 25, 2021

DAVIS WRIGHT TREMAINE LLP

By: 

Jacob M. Harper

Attorneys for Defendants Ralphs Grocery Company and The Kroger Co.

PROOF OF SERVICE BY OVERNIGHT MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine, LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566. I am familiar with the practice at my place of business for collection and processing of correspondence for overnight delivery by Overnight Service. Such correspondence will be deposited with a facility regularly maintained for Overnight Service for receipt on the next business day.

On January 25, 2022, I served the following document(s):

DEFENDANTS' NOTICE OF PLAINTIFF'S NON-OPPOSITION TO DEMURRER TO PLAINTIFF'S COMPLAINT

by placing a **true copy** in a separate envelope for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq.
Joshua A. Fields, Esq.
Kirtland & Packard LLP
1638 South Pacific Coast Highway
Redondo Beach, CA 90277
mlk@kirtlandpackard.com
jf@kirtlandpackard.com

Attorneys for Plaintiff Yosuke Hiradate

and by sealing the envelope and placing it for collection and delivery by an overnight mail service with delivery fees paid or provided for in accordance with ordinary business practices.

Executed on January 25, 2022, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Frank M. Romero



Print Name

Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Torrance Courthouse Mailing Address: 825 Maple Avenue City, State and Zip Code: Torrance CA 90503	
SHORT TITLE: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 21TRCV00301

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 5248823_2022_01_25_19_09_10_537_3
Submission Number: 22LA00098880
Court Received Date: 01/25/2022
Court Received Time: 11:16 am
Case Number: 21TRCV00301
Case Title: YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY, et al.
Location: Torrance Courthouse
Case Type: Civil Unlimited
Case Category: Other Commercial/Business Tort (not fraud/ breach of contract)
Jurisdictional Amount: Over \$25,000
Notice Generated Date: 01/25/2022
Notice Generated Time: 11:20 am

Documents Electronically Filed/Received

Status

Notice (name extension)

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
Contact: Legal Connect
Phone: (800) 909-6859

EXHIBIT 20

1 Michael Louis Kelly, State Bar No. 82063
2 mlk@kirtlandpackard.com
3 Joshua A. Fields, State Bar No. 242938
4 jf@kirtlandpackard.com
5 KIRTLAND & PACKARD LLP
6 1638 South Pacific Coast Highway
7 Redondo Beach, California 90277
8 Tel: (310) 536-1000 / Fax: (310) 536-1001

9 *Counsel for Plaintiff Yoshi Hiradate*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 **YOSHI HIRADATE,**

13 Plaintiff,

14 v.

15 RALPH'S GROCERY COMPANY, an Ohio
16 Corporation; THE KROGER COMPANY, an
17 Ohio Corporation; and DOES 1-50, inclusive,

18 Defendants.
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Case No. 21TRCV00301

Assigned to Hon. Gary Y. Tanaka, Dept. B

**PLAINTIFF'S NOTICE OF TIMELY
FILING AND SERVICE OF FIRST
AMENDED COMPLAINT**

Complaint Filed: April 19, 2021

Trial Date: N/A

1 **TO THE HONORABLE COURT AND TO DEFENDANTS AND THEIR ATTORNEYS**
 2 **OF RECORD:**

3 **PLEASE TAKE NOTICE** that Plaintiff Yoshi Hiradate ("Plaintiff") timely filed and served
 4 his First Amended Complaint for Damages and Permanent Injunctive Relief ("FAC") in the above-
 5 captioned action on January 20, 2022, pursuant to *Code of Civil Procedure* § 472(a). "[T]he filing of
 6 an amended complaint renders moot a demurrer to the original complaint." *JKC38H v. Colton* (2013),
 7 221 Cal.App.4th 1468, 1477. Thus, Defendants' demurrer, currently set for hearing February 2, 2022,
 8 has been mooted. Additionally, all arguments set forth in Defendants' Notice of Plaintiff's Non-
 9 Opposition to Demurrer to Plaintiff's Complaint, filed on January 25, 2022, should be disregarded as
 10 the demurrer discussed therein is moot.

11
 12 Dated: January 26, 2022

KIRTLAND & PACKARD, LLP

13
 14 By: /s/ Joshua A. Fields
 MICHAEL LOUIS KELLY
 JOSHUA A. FIELDS

15
 16 *Counsel for Plaintiff Yoshi Hiradate*
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PROOF OF SERVICE

[CCP §§1010.6, 1011, 1013, 1013a, 2015.3; CRC 2.251, 2.306]
 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1638 South Pacific Coast Highway, Redondo Beach, California 90277.

On January 26, 2022, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein: **PLAINTIFF'S NOTICE OF TIMELY FILING AND SERVICE OF FIRST AMENDED COMPLAINT**

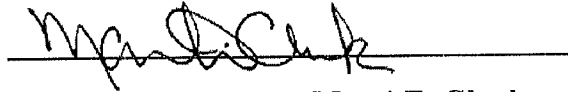
By ELECTRONIC SERVICE pursuant to CCP 1010.6(a)(6), CRC 2.251, and the COVID-19 emergency and by agreement of all parties, on January 26, 2022, from the electronic notification address of the undersigned, I caused the within document(s) to be electronically served on the parties listed below, and the transmission was reported as complete and without error.

✓ **U.S. MAIL:** The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

PERSONS OR PARTIES SERVED:Counsel for Defendants.

Jacob M. Harper | Davis Wright Tremaine LLP
 Partner, Complex Business Litigation and
 Class Action Defense
 865 South Figueroa Street, Suite 2400
 Los Angeles, California 90017
 Tel: (213) 633-6863 | Fax: (213) 633-6899
 Email: jharper@dwt.com

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 26, 2022.



Marti F. Clark

EXHIBIT 21

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department B

21TRCV00301

**YOSUKE HIRADATE vs RALPH'S GROCERY COMPANY,
et al.**

February 2, 2022

8:30 AM

Judge: Honorable Gary Y. Tanaka

Judicial Assistant: J. Ahn

Courtroom Assistant: M. Fondon

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Joshua A. Fields For Michael Kelly (Telephonic)

For Defendant(s): James Moon For Jacob M. Harper (Telephonic)

NATURE OF PROCEEDINGS: Case Management Conference

Matter is called for hearing.

Pursuant to the request of defendant, the Case Management Conference scheduled for 02/02/2022 is continued to 4/12/2022 at 08:30 AM in Department B at Torrance Courthouse.

Notice is waived.

EXHIBIT 22

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
3 *jharper@dwt.com*
4 James H. Moon (SBN 268215)
5 *jamesmoon@dwt.com*
6 Peter K. Bae (SBN 329158)
7 *peterbae@dwt.com*
8 865 South Figueroa Street, Suite 2400
9 Los Angeles, California 90017-2566
10 Telephone: (213) 633-6800
11 Facsimile: (213) 633-6899
12
13 *Attorneys for Defendants Ralphs Grocery*
14 *Co. and The Kroger Co.*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

14 YOSHI HIRADATE,

15 Plaintiff,

16 v.

17 RALPHS GROCERY CO., an Ohio
18 corporation; THE KROGER CO., an Ohio
19 corporation; and DOES 1-50, inclusive,

20 Defendants.

Case No. 21TRCV00301
Assigned to the Hon. Gary Y. Tanaka

**DECLARATION OF JACOB M. HARPER
REGARDING INABILITY TO MEET
AND CONFER [CCP 430.41]**

Action Filed: April 19, 2021
Trial Date: n/a

DECLARATION OF JACOB M. HARPER

I, Jacob M. Harper, declare and state as follows:

1. I am a partner at the law firm of Davis Wright Tremaine LLP, counsel of record for Defendants Ralphs Grocery Co. and The Kroger Co. (collectively, Defendants) in this action. This declaration is based on my own personal knowledge or, where appropriate, on information and belief. If called as a witness, I could and would testify competently to the information set forth herein.

2. I make this declaration pursuant to Code of Civil Procedure section 430.41(a)(2) based on the inability of the parties to meet and confer at least five days prior to the date Defendants' response to Plaintiff Yoshi Hiradate's (Plaintiff) operative First Amended Complaint (FAC) is due.

3. Plaintiff filed the FAC on January 20, 2022, and served this pleading via U.S. Mail on Defendants. Therefore, Defendants' response to the FAC would be due on February 24, 2022.

4. On February 2, 2022, my colleague James Moon emailed Plaintiff's counsel Joshua Fields to set up a time to meet and confer regarding this matter. Mr. Moon and Mr. Fields spoke on February 4, 2022. During that phone call, Mr. Moon advised Mr. Fields of several issues regarding the FAC, but Mr. Fields confirmed he would pursue, *inter alia*, the public injunctive relief claim. The parties agreed to exchange correspondence and meet and confer regarding these issues to see if they could be resolved without a court ruling.

5. On February 18, 2022, Mr. Fields emailed Mr. Moon requesting a follow up call. I responded to Mr. Fields' email on February 22 and February 24, 2022, seeking to meet and confer regarding Defendants' intent to demur to the FAC, but the parties were not able to schedule a time. Thus, the parties have not had an opportunity to have in-depth discussions regarding these issues or any other issues that may come up in meet and confer discussions five days before Defendants' response to the FAC is due.

6. Defendants have not previously obtained an automatic extension of time to respond to the FAC.

1 7. In light of the facts stated in this declaration, Defendants are entitled to the
2 automatic 30-day extension of time within which to file a response to the FAC as provided by
3 Code of Civil Procedure Section 430.41(a)(2). Defendants' deadline to respond to the FAC is
4 continued by 30 days until March 28, 2022.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct. Executed this 24th day of February 2022, at Los Angeles,
7 California.

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Jacob M. Harper

PROOF OF SERVICE BY U.S. MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On February 24, 2022, I served the foregoing document(s) described as:

**DECLARATION OF JACOB M. HARPER
REGARDING INABILITY TO MEET AND CONFER [CCP 430.41]**

by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael Louis Kelly, Esq.
Joshua A. Fields, Esq.
Kirtland & Packard LLP
1638 South Pacific Coast Highway
Redondo Beach, CA 90277
mlk@kirtlandpackard.com
jf@kirtlandpackard.com

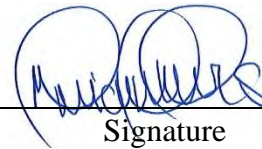
Attorneys for Plaintiff Yosuke Hiradate

☒ I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on February 24, 2022, at Los Angeles, California.

<input checked="" type="checkbox"/>	State	I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
<input type="checkbox"/>	Federal	I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Monica Davis
Print Name



Signature

EXHIBIT 23

Code of Civil Procedure, §§ 284(1), 285;
Cal. Rules of Court, rule 3.1362;
www.courtinfo.ca.gov

CASE NAME: — Hiradate v. Ralph's Grocery Co., et al.	CASE NUMBER: 21TRCV00301
---	-----------------------------

PROOF OF SERVICE BY MAIL
Substitution of Attorney—Civil

Instructions: After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and **not a party to this cause**. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (specify): 1638 S. Pacific Coast Hwy.
Redondo Beach, CA 90277
2. I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.

(1) Date of mailing: March 11, 2022 (2) Place of mailing (city and state): Redondo Beach, CA 90277
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 11, 2022

Marti F. Clark

(TYPE OR PRINT NAME)



(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served: Jacob M. Harper – Davis Wright Tremaine LLP
b. Address (number, street, city, and ZIP): 865 S. Figueroa Street, Suite 2400,
Los Angeles, CA 90017

c. Name of person served:
d. Address (number, street, city, and ZIP):

e. Name of person served:
f. Address (number, street, city, and ZIP):

g. Name of person served:
h. Address (number, street, city, and ZIP):

i. Name of person served:
j. Address (number, street, city, and ZIP):

☐ List of names and addresses continued in attachment.

EXHIBIT 24

1 DAVIS WRIGHT TREMAINE LLP

2 Jacob M. Harper (SBN 259463)

3 *jharper@dwt.com*

4 James H. Moon (SBN 268215)

5 *jamesmoon@dwt.com*

6 Peter K. Bae (SBN 329158)

7 *peterbae@dwt.com*

8 865 South Figueroa Street, Suite 2400

9 Los Angeles, California 90017-2566

10 Telephone: (213) 633-6800

11 Facsimile: (213) 633-6899

12 *Attorneys for Defendants Ralphs Grocery*
 13 *Company and The Kroger Co.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16 YOSHI HIRADATE,

17 Plaintiff,

18 v.

19 RALPHS GROCERY COMPANY, an Ohio
 20 corporation; THE KROGER CO., an Ohio
 21 corporation; and DOES 1-50, inclusive,

22 Defendants.

Case No. 21TRCV00301

Assigned to the Hon. Gary Y. Tanaka

**STIPULATION TO EXTEND DEADLINE
 TO RESPOND TO FIRST AMENDED
 COMPLAINT; [~~PROPOSED~~] ORDER**

Action Filed: April 19, 2021

Trial Date: n/a

FILED

Superior Court of California
 County of Los Angeles

04/01/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Ahn Deputy

1 Plaintiff Yoshi Hiradate, together with Defendants Ralphs Grocery Company and The
2 Kroger Co. (collectively, Defendants), present the following stipulation for the Court's approval.

3 A. On April 19, 2021, Plaintiff filed the original Complaint. On April 23, 2021,
4 Plaintiff personally served this pleading on Defendants. Therefore, Defendants' response to the
5 Complaint was due on May 24, 2021.

6 B. On or about May 21, 2021, Plaintiff's counsel provided a 14-day extension for
7 Defendants to respond to the Complaint until June 7, 2021.

8 C. On June 4, 2021, Defendants filed a Declaration Regarding Inability to Meet and
9 Confer on the Complaint, which automatically continued Defendants' deadline to respond to the
10 Complaint until July 7, 2021.

11 D. On July 7, 2021, Defendants filed a Demurrer to the Complaint.

12 E. On January 20, 2022, Plaintiff filed the operative First Amended Complaint
13 (FAC), and served this pleading on Defendants via U.S. Mail. Therefore, Defendants' response
14 to the FAC was due on February 24, 2022.

15 F. On February 24, 2022, Defendants filed a Declaration Regarding Inability to Meet
16 and Confer on the FAC, which automatically continued Defendants' deadline to respond to the
17 FAC until March 28, 2022.

18 G. On March 18, 2022, counsel for the parties conferred telephonically regarding
19 Defendants' anticipated demurrer to the FAC and continue to confer on whether issues
20 Defendants' counsel have raised may be resolved without the filing of a demurrer.

21 H. The parties believe good cause exists to extend Defendants' current response
22 deadline to the FAC by 14 days (i.e., until April 11, 2022) to allow the parties to further confer
23 regarding issues Defendants' counsel has raised. The parties agree Defendants will not be in
24 default if the Court does not rule on this stipulation before April 11, 2022, and Plaintiff will not
25 seek an entry of default during that period.

26 **IT IS HEREBY STIPULATED** and agreed by and between the parties as follows:
27 Defendants' deadline to respond to Plaintiff's FAC is extended from March 28, 2022 to April 11,
28

2022. Defendants will not be in default if the Court does not rule on this stipulation before April 11, 2022, and Plaintiff will not seek an entry of default during that period.

IT IS SO STIPULATED.

Dated: March 28, 2022

SCHONBRUN SEPLOW HARRIS HOFFMAN
& ZELDES, LLP

By: /s/ Joshua A. Fields
Joshua A. Fields

Attorneys for Plaintiff Yoshi Hiradate

Dated: March 28, 2022

DAVIS WRIGHT TREMAINE LLP

By: /s/ Jacob M. Harper
Jacob M. Harper

*Attorneys for Defendants Ralphs Grocery
Company and The Kroger Co.*

PROPOSED ORDER

Upon the stipulation of the parties and for good cause shown, Defendants Ralphs Grocery Company and The Kroger Co.'s deadline to respond to Plaintiff's First Amended Complaint is continued from March 28, 2022 to April 11, 2022.

IT IS SO ORDERED.



Gary Y. Tanaka

Date: May 11, 2022

Gary Y. Tanaka / Judge

Honorable Gary Y. Tanaka
Judge of the Superior Court

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On March 28, 2022, I served the foregoing document(s) described as:
STIPULATION TO EXTEND DEADLINE TO RESPOND TO FIRST AMENDED COMPLAINT; [PROPOSED] ORDER by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Joshua A. Fields
Schonbrun Seplow Harris Hoffman & Zeldes,
LLP
501 W. Broadway, Suite 800
San Diego, CA 92101
jf@sshhlzlaw.com
Tel: (619) 400-4990
Fax: (310) 399-7040

Attorneys for Plaintiff Yosuke Hiradate

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on March 28, 2022, at Los Angeles, California.

- | | | |
|-------------------------------------|---------|---|
| <input checked="" type="checkbox"/> | State | I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. |
| <input type="checkbox"/> | Federal | I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made. |

Lina Pearmain

Print Name



Signature

EXHIBIT 25

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
3 *jharper@dwt.com*
4 James H. Moon (SBN 268215)
5 *jamesmoon@dwt.com*
6 Peter K. Bae (SBN 329158)
7 *peterbae@dwt.com*
8 865 South Figueroa Street, Suite 2400
9 Los Angeles, California 90017-2566
10 Telephone: (213) 633-6800
11 Facsimile: (213) 633-6899
12
13 *Attorneys for Defendants Ralph's Grocery*
14 *Company and The Kroger Company*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

14 YOSHI HIRADATE,

15 Plaintiff,

16 v.

17 RALPH'S GROCERY COMPANY, an Ohio
18 corporation; THE KROGER CO., an Ohio
19 corporation; and DOES 1-50, inclusive,

20 Defendants.

Case No. 21TRCV00301
Assigned to the Hon. Gary Y. Tanaka

**NOTICE OF CONTINUANCE OF CASE
MANAGEMENT CONFERENCE**

Date: June 1, 2022
Time: 8:30 a.m.
Dept.: B

Action Filed: April 19, 2021
Trial Date: n/a

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

2 **PLEASE TAKE NOTICE** that on April 8, 2022, the Court continued the Case
3 Management Conference set on April 12, 2022 to June 1, 2022, at 8:30 a.m., in Dept. B, before
4 Judge Gary Y. Tanaka.

5
6
7 Dated: April 8, 2022

DAVIS WRIGHT TREMAINE LLP

8
9 By: 

10 Jacob M. Harper

11 *Attorneys for Defendant*
12 *Ralph's Grocery Company and The Kroger Co.*
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On April 8, 2022, I served the foregoing document(s) described as: **NOTICE OF CONTINUANCE OF CASE MANAGEMENT CONFERENCE** as follows:

Joshua A. Fields
 Schonbrun Seplow Harris Hoffman & Zeldes,
 LLP
 501 W. Broadway, Suite 800
 San Diego, CA 92101
jf@sshhzlaw.com
 Tel: (619) 400-4990
 Fax: (310) 399-7040

Attorneys for Plaintiff Yosuke Hiradate

X (VIA MAIL) I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

X (VIA EMAIL) By forwarding a portable document file to the electronic mail address(es) below from electronic mail address linapearmain@dwt.com, at Suite 2400, 865 South Figueroa Street, Los Angeles, California.

Executed on April 8, 2022, at Los Angeles, California.

☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Lina Pearmain
 Print Name


 Signature

EXHIBIT 26

Electronically Received 04/11/2022 04:01 PM

1 DAVIS WRIGHT TREMAINE LLP
 2 Jacob M. Harper (SBN 259463)
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 10 Telephone: (213) 633-6800
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12 *Attorneys for Defendants Ralphs Grocery*
 13 *Company and The Kroger Co.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **COUNTY OF LOS ANGELES**

16 YOSHI HIRADATE,

17 Plaintiff,

18 v.

19 RALPHS GROCERY COMPANY, an Ohio
 20 corporation; THE KROGER CO., an Ohio
 21 corporation; and DOES 1-50, inclusive,

22 Defendants.

FILED
 Superior Court of California
 County of Los Angeles
 04/14/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Ahn Deputy

Case No. 21TRCV00301
 Assigned to the Hon. Gary Y. Tanaka

**STIPULATION TO EXTEND DEADLINE
 TO RESPOND TO FIRST AMENDED
 COMPLAINT; [~~PROPOSED~~] ORDER**

Action Filed: April 19, 2021
 Trial Date: n/a

Electronically Received 04/11/2022 04:01 PM

1 Plaintiff Yoshi Hiradate, together with Defendants Ralphs Grocery Company and The
2 Kroger Co. (collectively, Defendants), present the following stipulation for the Court's approval.

3 A. On April 19, 2021, Plaintiff filed the original Complaint.

4 B. On July 7, 2021, Defendants filed a Demurrer to the Complaint.

5 C. On January 20, 2022, Plaintiff filed the operative First Amended Complaint
6 (FAC), and served this pleading on Defendants via U.S. Mail. Therefore, Defendants' response
7 to the FAC was due on February 24, 2022.

8 D. On February 24, 2022, Defendants filed a Declaration Regarding Inability to Meet
9 and Confer on the FAC, which automatically continued Defendants' deadline to respond to the
10 FAC until March 28, 2022.

11 E. On March 18, 2022, counsel for the parties conferred telephonically regarding
12 Defendants' anticipated demurrer to the FAC.

13 F. On March 28, 2022, the parties stipulated to extend Defendants' response
14 deadline to the FAC until April 11, 2022, in order to further confer regarding issues Defendants'
15 counsel had raised.

16 G. On April 1, 2022, the Court entered the parties' stipulation to extend Defendants'
17 response deadline to the FAC until April 11, 2022.

18 H. On April 11, 2022, Plaintiff's counsel indicated he will amend the FAC no later
19 than April 25, 2022.

20 I. The parties believe good cause exists to extend the deadline for Defendants to
21 respond to the FAC to no later than April 29, 2022, in the interests of efficiency and judicial
22 economy, to allow for the filing of Plaintiff's second amended complaint. The parties agree
23 Defendants will not be in default if the Court does not rule on this stipulation before April 29,
24 2022, and Plaintiff will not seek an entry of default during that period.

25 **IT IS HEREBY STIPULATED** and agreed by and between the parties as follows: The
26 deadline for Defendants to respond to the First Amended Complaint is extended to April 29,
27 2022. Defendants will not be in default if the Court does not rule on this stipulation before April
28 29, 2022, and Plaintiff will not seek an entry of default during that period.

1 **IT IS SO STIPULATED.**

2 Dated: April 11, 2022

3 SCHONBRUN SEPLOW HARRIS HOFFMAN
4 & ZELDES, LLP

5 By: /s/ Joshua A. Fields
6 Joshua A. Fields

7 *Attorneys for Plaintiff Yoshi Hiradate*

8 Dated: April 11, 2022

9 DAVIS WRIGHT TREMAINE LLP

10 By: /s/ Jacob M. Harper
11 Jacob M. Harper

12 *Attorneys for Defendants Ralphs Grocery*
13 *Company and The Kroger Co.*

PROPOSED ORDER

Upon the stipulation of the parties and for good cause shown, the deadline for Defendants to respond to the First Amended Complaint is extended to April 29, 2022.

IT IS SO ORDERED.



Gary Y. Tanaka

Date: May 14, 2022

Gary Y. Tanaka / Judge
Honorable Gary Y. Tanaka

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On April 11, 2022, I served the foregoing document(s) described as: **STIPULATION TO EXTEND DEADLINE TO RESPOND TO FIRST AMENDED COMPLAINT; [PROPOSED] ORDER** as follows:

Joshua A. Fields
Schonbrun Seplow Harris Hoffman & Zeldes,
LLP
501 W. Broadway, Suite 800
San Diego, CA 92101
jfields@sshhlaw.com
Tel: (619) 400-4990
Fax: (310) 399-7040

Attorneys for Plaintiff Yosuke Hiradate

X (VIA MAIL) I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

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Executed on April 11, 2022, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Lina Pearmain

Print Name



Signature

EXHIBIT 27

Helen I. Zeldes (SBN 220051)

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SCHONBRUN SEPLOW HARRIS

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Telephone: (619) 400-4990

Counsel for Plaintiff,

*Yosuke Hiradate, on behalf of himself and
all others similarly situated.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

YOSUKE HIRADATE, an individual, on behalf
of himself and all others similarly situated,

Plaintiffs,

v.

RALPH'S GROCERY COMPANY, an Ohio
Corporation; THE KROGER COMPANY, an
Ohio Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 21TRCV00301

Assigned to the Hon. Gary Y. Tanaka, Dept. B

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES AND PERMANENT
INJUNCTIVE RELIEF:**

1. Violation of California's Unfair Competition Law ("UCL"); Bus. & Prof. Code § 17200 *et seq.*
2. Violation of California's Consumer Legal Remedies Act ("CLRA"); Cal. Civil Code §1750 *et seq.*
3. Violation of California's False Advertising Law ("FAL"), Bus & Prof. Code § 17500 *et seq.*
4. Breach of Implied Warranty of Merchantability, Civil Code 1971 *et seq.*
5. Unjust Enrichment

JURY TRIAL DEMANDED

1 Plaintiff YOSUKE HIRADATE (“Plaintiff” or “Mr. Hiradate”), on behalf of himself and all
 2 others similarly situated, brings this Second Amended Class Action Complaint against Ralph’s Grocery
 3 Company (“Ralph’s”), The Kroger Company (“Kroger”), and DOES 1-50 (collectively “Defendants”),
 4 and alleges as follows based on investigation of counsel and information and belief:

5 **THE NATURE OF THE CASE**

6 1. Plaintiff Yosuke Hiradate brings this action on behalf of himself and all other similarly
 7 situated consumers, seeking relief from Defendants’ practice of selling gift cards to California consumers
 8 for specified monetary values where the gift cards actually have no value and are thus worthless to the
 9 consumers. Despite RALPH’S knowledge of this issue, RALPH’S sold Mr. Hiradate a worthless gift
 10 card for which he paid a substantial amount of money to RALPH’S. In response to Mr. Hiradate’s
 11 complaints related to this business practice, RALPH’S has maintained throughout that its express
 12 company policy is that it considers all gift card sales to be “final.” KROGER did not respond at all when
 13 Mr. Hiradate reached out to it on multiple occasions after RALPH’S did not refund the money for the
 14 worthless gift card sold to Mr. Hiradate.

15 2. Plaintiff thus brings claims under California’s Unfair Competition Law (“UCL”), the
 16 Consumer Legal Remedies Act (“CLRA”), the False Advertising Law (“FAL”), for Breach of Implied
 17 Warranty of Merchantability and for Unjust Enrichment. Plaintiff seeks a refund of the monies paid to
 18 Defendants, actual damages, statutory damages, injunctive relief and all other relief that the Court deems
 19 is necessary and proper.

20 **THE PARTIES**

21 3. Plaintiff, at all relevant times herein, was and is a citizen and resident of Los Angeles
 22 County, California. On December 21, 2019, Plaintiff visited Ralph’s Grocery Store located at 1770
 23 Carson Street in Torrance, California, and purchased a \$500 Visa Gift Card, as confirmed on the receipt
 24 he received. Plaintiff also incurred a \$5.95 Gift Card activation fee. As soon as Plaintiff returned home,
 25 he opened the Gift Card package and checked the balance for the first time, prior to using the Gift Card.
 26 Plaintiff was shocked to learn the Gift Card he had just paid Ralph’s \$500 for actually had zero value.

27 4. Defendant Ralph’s Grocery Company (“RALPH’S”) is an Ohio Corporation with its
 28 principal place of business in Cincinnati, Ohio. RALPH’S is registered to do business in California and

operates in Los Angeles County, where its local headquarters are in Compton, California. RALPH'S is a multistate corporation that operates a chain of grocery stores, selling goods to consumers throughout the country.

5. Defendant The Kroger Company ("KROGER") is an Ohio Corporation with its principal place of business in Cincinnati, Ohio. KROGER is registered to do business in California and operates in Los Angeles County, where its local headquarters are in Compton, California. KROGER operates, either directly or through its subsidiaries such as defendant RALPH'S, which it wholly owns and operates, supermarkets and multi-department stores nationwide. KROGER and RALPH's are hereinafter collectively referred to as "Defendants".

6. Plaintiff does not know the true names or capacities of the persons or entities sued herein as DOES 1-50, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the DOE Defendants is in some manner legally responsible for the damages suffered by Plaintiff as alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these Defendants when they have been ascertained, along with appropriate charging allegations, as may be necessary.

7. At all times herein mentioned, Defendants, and each of them, were the agents, principals, servants, employees, and subsidiaries of each of the remaining Defendants, and were at all times acting within the purpose and scope of such agency, service, and employment, and directed, consented, ratified, permitted, encouraged, and approved the acts of each remaining Defendant.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all causes of action asserted herein under the California Constitution.

9. Venue is proper in this County because the acts and occurrences alleged herein occurred in this County, and pursuant to California *Civil Code* § 1780(d) because Defendants do business here.

FACTUAL ALLEGATIONS

10. On December 21 2019, Plaintiff visited the RALPH'S store at 1770 Carson Street in Torrance, California, where he saw a Visa Gift Card available for sale, with packaging that indicated it could be purchased in "Any Amount" between "\$20 and \$500" but that it had "NO VALUE UNTIL

1 *PAID FOR AND ACTIVATED AT THE REGISTER.*” (Emphasis added). At the RALPH’S STORE,
2 Plaintiff purchased a \$500 Visa Gift Card, by requesting that \$500 be added to the Gift Card by the
3 Ralph’s employee at the cash register, who agreed to do so, and the amount of the transaction was
4 confirmed on the receipt Plaintiff received, which also demonstrated the Gift Card was activated.
5 Plaintiff also incurred a \$5.95 activation fee for the Gift Card. As soon as Plaintiff returned home after
6 making this purchase, he opened the Gift Card package and checked the balance for the first time, prior
7 to using the Gift Card. Plaintiff was shocked to learn the Gift Card he had just paid RALPH’S \$500 for,
8 in addition to the \$5.95 activation fee, actually had zero value.

9 11. Plaintiff quickly returned to the RALPH’S store on the same day to request a refund and
10 get an explanation for why the Gift Card had no value when he first attempted to access it. Plaintiff
11 spoke to the Store Manager, Stephanie, who told him the Gift Card had been tampered with prior to
12 purchase. Stephanie also told Plaintiff she would call the Gift Card merchant in order to file a claim for
13 gift card fraud. After Stephanie filed the claim on that date, she was provided a case number and 10-
14 digit ID which she wrote on Plaintiff’s Gift Card receipt. Stephanie also told Plaintiff on that same date
15 that what happened to his card involved someone placing a photocopy of another gift card over the Gift
16 Card Plaintiff had purchased, prior to him checking out at RALPH’S, such that the bar card for the other
17 gift card would be the one receiving money added to it by the RALPH’S cashier at check out.

18 12. Stephanie informed Plaintiff that a staff member meeting regarding this *exact problem*
19 had been held that very same morning at the store. There, staff members at the RALPH’S store were
20 instructed to check for any of the detectable signs of tampering on any gift cards RALPH’S sold, such
21 as different textures between a valid card with ridges at the bar code area and one that had been tampered
22 with and had no such ridges.

23 13. Additionally, a former assistant manager from another RALPH’S store in the area named
24 Donald, who Plaintiff also spoke to that night, also told him *gift card tampering has been an on-going*
25 *problem for years at RALPH’S*, that he believes the tampering is an inside job, i.e. that someone at
26 RALPH’S was participating in the tampering, and that RALPH’S is aware of this precise issue happening
27 at its stores such as the one in Torrance.

1 14. Thereafter, Stephanie (the RALPH'S Store Manager) told Plaintiff he needed to call the
2 gift card company to request a new gift card, and then after calling, he would need to fax a copy of the
3 receipt, gift card, the tampering gift card number (i.e. the photo with a gift card number that was placed
4 over Plaintiff's gift card prior to his purchase of it at RALPH'S), and that Plaintiff would then receive a
5 new gift card within a few weeks. That night, Plaintiff tried to reach out to the Gift Card merchant
6 several times at the phone number on the back of the card, in order to attempt to have this issue addressed
7 but, despite several attempts, could not reach a service associate or anyone in management at the Gift
8 Card merchant to resolve this matter.

9 15. Thereafter, that same night Plaintiff again returned to the RALPH'S store in Torrance
10 where Stephanie the Store Manager assisted him in submitting the documents via fax including the
11 receipt (with her writing of the case number and 10-digit ID), a photocopy of the gift card, a photocopy
12 of the package including the false bar code from the gift card, Plaintiff's photo ID and contact
13 information. Shortly thereafter, on a later date, as Stephanie the Store Manager had also suggested,
14 Plaintiff called the 1-866-544-8062 phone number on the activation status receipt RALPH'S gave him
15 after his purchase (which apparently is KROGER's customer relations number), but no one at KROGER
16 ever answered his multiple calls and there was no messaging system that would allow him to leave a
17 voicemail message. To date, Plaintiff received no response from the gift card merchant or a replacement
18 card with the value of \$500 and the activation fee waived, despite his efforts, and Defendants also have
19 not compensated Plaintiff for the loss.

20 16. RALPH'S own position is that gift cards such as the one Plaintiff purchased are subject
21 to tampering which can render them worthless, and which RALPH'S knows, yet it still sold the Gift
22 Card Plaintiff purchased to him and retained \$505.95 of Plaintiff's money, despite Plaintiff receiving no
23 value in return whatsoever. Further, RALPH'S maintains in response to consumer complaints regarding
24 this practice its express policy is that it considers all gift card sales at its stores to be "final". Additionally,
25 KROGER's express policy is to prohibit individual retail stores it owns such as RALPH'S from directly
26 refunding gift card purchases to consumers who paid money to RALPH'S for gift cards that are
27 worthless. KROGER maintains such an express policy even though KROGER does not respond to
28

1 attempts by consumers such as Plaintiff to obtain a refund for valueless gift cards sold at RALPH's stores
2 and provides no voicemail messaging system on which a consumer can leave a message for it.

3 17. Subsequently, Plaintiff has learned of numerous consumers at RALPH'S stores, including
4 without limitation at RALPH'S stores in California, who have been similarly affected by purchasing a
5 gift card at RALPH'S which was actually worthless, and that Defendants been aware of the issue of
6 worthless gift card sold to consumers at RALPH's stores, for many years. Despite their knowledge of
7 this issue, Defendants improperly put the burden on the victimized consumer to attempt to obtain proper
8 value for the gift cards after the purchase, even though it was Defendants' stores that sold the consumers
9 worthless gift cards, at full price, for their own profit.

10 18. In a March 1, 2012 blog posted entitled "**Scammers Hit Grocery Store Gift Card**
11 **Kiosk, Swap Out Empty Cards for New Ones**," on the Consumerist.com website, operated by
12 Consumer Reports, one consumer writes that an employer had purchased numerous \$100 gift cards at a
13 RALPH's store, which turned out to be valueless at purchase, and the "grocery store blame[d] card-
14 switching thieves."¹ The post also noted that both RALPH'S and parent company KROGER were
15 specifically notified by the consumer in that instance of the problem of the valueless gift cards being
16 sold at RALPH'S stores. Further, the consumer posed the question of why does RALPH'S "not keep
17 the 'real' cards behind a desk or locked up to prevent this"? The consumer also suggested RALPH'S
18 should "just do what Costco does and have the real thing in a safe place."

19 19. Similarly, in a May 13, 2015 blog post entitled "**PSA: Don't Buy US Bank Visa Gift**
20 **Cards from Ralphps / Kroger**" on the Travel With Grant website blog, it was noted by the blogger Grant
21 that, several days prior to the post, he "was at a local Ralphps (Kroger) grocery store in Huntington Beach,
22 CA and bought a \$500 Visa Gift Card".² Grant posted that, "shortly after purchasing the card (like 5
23 minutes later)," he discovered it was valueless, so he went back to the RALPH'S store and was told by
24 the Store Manager to call and speak to a KROGER agent, which he did. Grant also noted that the Store
25 Manager then discovered numerous other compromised gift cards at the RALPH'S store during that visit
26 and "shared with me a similar story where someone bought 3 \$500 Visa Gift Cards on Christmas Eve"

27 ¹ [https://www.consumerist.com/2012/03/01/scammers-hit-grocery-store-gift-card-kiosk-swap-out-empty-cards-](https://www.consumerist.com/2012/03/01/scammers-hit-grocery-store-gift-card-kiosk-swap-out-empty-cards-for-new-ones/index.html)
28 [for-new-ones/index.html](https://www.consumerist.com/2012/03/01/scammers-hit-grocery-store-gift-card-kiosk-swap-out-empty-cards-for-new-ones/index.html), last visited April 10, 2022.

² <https://travelwithgrant.boardingarea.com/2015/05/13/psa-dont-buy-us-bank-visa-gift-cards-from-ralphps-kroger/>,
last visited April 10, 2022.

1 with no value. The comments below the blog post show numerous additional consumers complaining
2 of purchasing valueless gift cards at RALPH's up to and including in 2022.

3 20. In an August 11, 2018 CBS News report out of Dallas Fort Worth, a Federal Trade
4 Commission attorney M. Hassan Aijaz, explained how numerous gift cards sold at KROGER in Texas
5 could have been compromised, by something as simple as hackers using pen and paper to write down
6 the bar codes visible on the shelves of KROGER stores.³ In that instance, other individuals apparently
7 made purchases a RALPH'S store in California with money that should have been on the consumer's
8 cards purchased a KROGER's store in Texas.

9 21. As recently as **February 2022**, a consumer in the Los Angeles area complained on an
10 internet forum designed to raise awareness about unscrupulous businesses that he:

11 purchased a Visa gift card for the amount \$500 ... on [] Feb 15 at the
12 Burbank, CA on victory Blvd., only to find out that the gift card that they
13 sold me was a scam and they couldn't do anything to refund my money. I
14 called the number on the back of the gift card only to be placed on hold for
15 an hour and a half and nobody picked up. called corporate office in
16 Compton, CA only to hear prompts and was never able to get a customer
17 service representative on the phone. Now... I'm out \$500 because Ralphs
18 supermarket can not and will not refund my money.

19 And Luis the manager at ralphs was extremely rude and hung up on me,
20 after he admitted on the phone that he know that some of the gift cards are
21 compromised but still sells the gift cards to their customers.⁴

22 22. Plaintiff is informed and believes that, unlike Defendants, retailers such as Costco
23 Wholesale Corporation ("Costco") take reasonable and necessary precautions to prevent the sale of
24 valueless and/or compromised gift cards at their stores by, for example, restricting the public from having
25 access to gift cards on their shelves by keeping them behind a counter where consumers who want to
26 purchase gift cards must request them from an attendant.

27 23. Defendants have not adequately taken preventative measures to prevent the sale of
28 valueless gift cards at their stores. Defendants have not adequately trained or required their associates
to carefully and consistently inspect gift cards prior to sale for evidence of tampering, such as checking
for any of the detectable signs of tampering on any gift cards sold at their stores, such as different textures
between a valid card with ridges at the bar code area and one that had been tampered with and had no

³ <https://www.cbsnews.com/dfw/news/its-a-big-scam-retailers-respond-to-gift-card-theft/>, last visited April 10,
2022.

⁴ <https://www.complaintsboard.com/ralphs-grocery-b120119>, last visited April 24, 2022.

such ridges. Defendants also have not adequately restricted the public from having access to gift cards on the shelves of their stores by keeping them behind a counter where consumers who want to purchase gift cards must request them from an attendant, which is a preventative measures Plaintiff is informed and believes retailers such as Costco already engage in.

24. Defendants must be required to take such action to prevent valueless gift cards from being sold at their stores, or if not, Defendants should not be selling these gift cards, or be allowed to sell these gift cards at all, considering their actual knowledge of the pervasive tampering issue at RALPH's stores, and that consumers such as Plaintiff end up having purchased gift cards with no value at all.

CLASS DEFINITION AND CLASS ALLEGATIONS

25. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated as members of the Class (collectively referred to hereinafter as the "Class") defined as follows:

- (1) **Class:** All persons who purchased a gift card from a RALPH's and/or KROGER store, for a specified monetary amount, and who were not able to utilize the total monetary amount of gift card value purchased, because the total monetary amount was not available on the gift card after purchase.

26. **Numerosity:** The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes the total number of class members is at least in the thousands and that the members of the Class are numerous. While the exact number and identities of all Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

27. **Commons Questions of Law and Fact Predominate:** There are many questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. The common questions of law and fact include, but are not limited to, the following:

- i. Whether Defendants were aware of the alleged tampering on gift cards prior to sales at their stores;

- ii. Whether Defendants should have known that gift cards were allegedly tampered with at their stores prior to sale;
- iii. Whether Defendants' sale of gift cards for a specified monetary amount to consumers who were not able to utilize the total monetary amount of gift card value purchased, because the appropriate monetary amount was not available on the gift card after purchase, violated the California's Unfair Competition Law, *Business & Professions Code* § 17200, *et seq.*;
- iv. Whether Defendants' sale of gift cards for a specified monetary amount to consumers who were not able to utilize the total monetary amount of gift card value purchased, because the appropriate monetary amount was not available on the gift card after purchase, violated the California's *Civil Code* §1750, *et seq.*;
- v. Whether Defendants' sale of gift cards for a specified monetary amount to consumers who were not able to utilize the total monetary amount of gift card value purchased, because the appropriate monetary amount was not available on the gift card after purchase, violated California's False Advertising Law, *Business & Professions Code* § 17500, *et seq.*;
- vi. Whether Defendants' sale of gift cards for a specified monetary amount to consumers who were not able to utilize the total monetary amount of gift card value purchased, because the appropriate monetary amount was not available on the gift card after purchase, was a breach of the implied warranty of merchantability and thus violated the California's *Civil Code* §1971, *et seq.*;
- vii. Whether Defendants were unjustly enriched as a result of their conduct in relation to the gift card sales;
- viii. The nature and extent of damages and other remedies to which the conduct of Defendant entitles Class members.

28. These common questions of law and fact predominate over questions that may affect individual class members in that the claims of all Class members for each of the claims herein can be established with common proof. Additionally, a class action would be "superior to other available

1 methods for the fair and efficient adjudication of the controversy” because: (1) Class members have little
2 interest in individually controlling the prosecution of separate actions because the individual damages
3 claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiff is not
4 aware of other lawsuits against Defendant commenced by or on behalf of members of the Class; and (3)
5 the conduct alleged is common to all Class members and because resolution of the claims of Plaintiff
6 will resolve the claims of the remaining Class, certification does not pose any manageability problems.

7 29. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class.
8 Plaintiff and all members of the Class have been similarly affected by Defendant’s conduct as they all
9 purchased a gift card from a RALPH’s and/or KROGER store, for a specified monetary amount, and
10 were not able to utilize the total monetary amount of gift card value purchased, because the appropriate
11 monetary amount was not available on the gift card after purchase.

12 30. **Adequacy of representation:** Plaintiff will fairly and adequately represent and protect
13 the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex
14 class action litigation. Plaintiff and his counsel are committed to prosecuting this action vigorously on
15 behalf of the Class and have the financial resources to do so.

16 31. **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will
17 continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class action is
18 superior to other available methods for the fair and efficient adjudication of the present controversy.
19 Class members have little interest in individually controlling the prosecution of separate actions because
20 the individual damages Claims of each Class member are not substantial enough to warrant individual
21 filings. In sum, for many, if not most, Class members, a class action is the only feasible mechanism that
22 will allow them an opportunity for legal redress and justice.

23 32. Adjudication of individual Class members’ claims with respect to Defendants would, as
24 a practical matter, be dispositive of the interests of other members not parties to the adjudication, and
25 could substantially impair or impede the ability of other Class members to protect their interests.

26 //

27 //

FIRST CAUSE OF ACTION

Violation of Unfair Competition Law

Business & Professions Code § 17200 et seq.

(By Plaintiff and the Class Against Defendants RALPH’S and KROGER and Does 1-50)

33. Plaintiff restates and incorporates by reference each and every allegation contained in paragraphs 1-30 as though fully set forth herein.

34. California *Business & Professions Code* § 17200 *et seq.* (hereafter referred to as the “Unfair Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair competition,” which include any unlawful, unfair, or fraudulent business practice.

35. The UCL imposes strict liability. Plaintiff need not prove that Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – only that such practices occurred.

36. Defendants’ selling of gift cards with specified values when the gift cards actually have zero value to the consumer who purchased them, is an unlawful, unfair, and fraudulent business practice prohibited by the UCL.

37. In carrying out their selling of gift cards for specified values when the gift cards actually have zero value to the consumer who purchased them, Defendants have violated the Consumer Legal Remedies Act, the False Advertising Law, and various other laws, regulations, statutes, and/or common law duties. Defendants’ business practices alleged herein, therefore, are unlawful within the meaning of the UCL.

38. The harm to Plaintiff and members of the public outweighs the utility of Defendants’ practices and, consequently, Defendants’ practices, as set forth fully above, constitute an unfair business act or practice within the meaning of the UCL.

39. Defendants’ practices are additionally unfair because they have caused Plaintiff and members of the public substantial injury, which is not outweighed by any countervailing benefits to consumers or to competition, and which is not an injury the consumers themselves could have reasonably avoided.

1 40. Defendants' practices, as set forth above, have misled the general public in the past and
 2 will mislead the general public in the future. Consequently, Defendants' practices constitute an unlawful
 3 and unfair business practice within the meaning of the UCL.

4 41. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition may
 5 be brought by any "person ... who has suffered injury in fact and has lost money or property as a result
 6 of such unfair competition." Defendants' misleading business practice – selling gift cards for specified
 7 values when the gift cards actually have zero value to the consumer who purchased them – directly and
 8 seriously injured Plaintiff and other members of the public who were thus deprived of their property
 9 rights.

10 42. The unlawful, unfair and fraudulent business practices of Defendants are ongoing and
 11 present a continuing threat that members of the public will be misled into believing they are purchasing
 12 gift cards for specified values but, like Plaintiff, will be deprived of that value and damaged financially.

13 43. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief
 14 ordering Defendants to take preventative measures to stop the sale of valueless gift cards at their stores,
 15 such as adequately training or requiring their associates to carefully and consistently inspect gift cards
 16 prior to sale for evidence of tampering, adequately restrict the public from having access to gift cards on
 17 the shelves of their stores by keeping them behind a counter, and/or cease this unfair business practice
 18 entirely by refraining from the sale of pre-paid gift cards entirely, as well as disgorgement and restitution
 19 of the money Defendants wrongfully obtained from Plaintiff associated with its unfair business practice.

20 **SECOND CAUSE OF ACTION**

21 **Violation of the Consumer Legal Remedies Act**

22 *Civil Code § 1750 et seq.*

23 **(By Plaintiff and the Class Against RALPH'S and KROGER and Does 1-50)**

24 44. Plaintiff restates and incorporates by reference each and every allegation contained in
 25 paragraphs 1-41 as though fully set forth herein.

26 45. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a non-
 27 exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or business
 28 practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-declared purpose

1 is to protect consumers against these unfair and deceptive business practices, and to provide efficient
 2 and economical procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was designed
 3 to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

4 46. More specifically, Plaintiff alleges that Defendants have violated paragraphs 4, 5, 9 and
 5 14 of *Civil Code* Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth
 6 herein. Defendants' unfair and deceptive business practices in carrying out the selling of gift cards for
 7 specified values when the gift cards actually have zero value to the consumer who purchased them, as
 8 described herein, were and are intended to and did and do result in Plaintiff, and other members of the
 9 public, being deprived of their right to a gift card with the value they paid for actually on it, in violation
 10 of the CLRA. Cal. Civ. Code § 1770 *et seq.* Plaintiff, and other members of the class, were damaged in
 11 that they paid purchase prices for gift cards higher than the zero value they received on the cards.

12 47. As a result of Defendants' unfair and/or deceptive business practices, Plaintiff and other
 13 members of the class, as a result of the business practice alleged herein, have suffered damage in that
 14 they lost a vested right in gift cards at specified values, because Defendants misrepresented that the offers
 15 for sale conferred rights to Plaintiff, and other members of the class, which they did not. Plaintiff seeks
 16 and is entitled to an order permanently enjoining Defendants from continuing to engage in the unfair and
 17 deceptive business practices alleged herein.

18 48. Pursuant to section 1782 of the CLRA, Plaintiff has notified Defendants in writing of the
 19 particular violations of Section 1770 of the CLRA Plaintiff alleges Defendants committed. In response,
 20 Defendants have not agreed to provide the monetary compensation Plaintiff demanded for himself and
 21 the members of the class.

22 **THIRD CAUSE OF ACTION**

23 **Violation of the False Advertising Law**

24 ***Business & Professions Code § 17500, et seq.***

25 **(By Plaintiff and the Class Against RALPH'S and KROGER and Does 1-50)**

26 49. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
 27 paragraphs 1-46 as if fully set forth herein.

50. California *Business & Professions Code* § 17500 provides that “[I]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever ... any statement ... which is untrue or misleading, and which is known, or which by exercise of reasonable care should be known, to be untrue or misleading...”

51. Defendants misled consumers by selling gift cards that could be purchased in “Any Amount,” “between \$20 and \$500” and according to the packaging have value once “*PAID FOR AND ACTIVATED AT THE REGISTER*,” when the gift cards actually have zero value to the consumers who purchased them at RALPH’S. (Emphasis added)

52. As a direct and proximate result of Defendants' misleading and false advertising, Plaintiff, along with other members of the class, has suffered injury in fact and has lost money and/or property.

53. The misleading and false advertising described herein presents a continuing threat to Plaintiff, the class, and other members of the public, in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to members of the public unless adequate preventative measures are required or the practices are enjoined or restrained, permanently.

FOURTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability
Civil Code § 1971 et seq.

(By Plaintiff and the Class Against RALPH'S and KROGER and Does 1-50)

54. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-51 as if fully set forth herein.

55. Plaintiff purchased the Visa Gift Card from RALPH's for \$500 and paid a \$5.95 activation fee for a total of \$505.95.

56. At the time of the purchase, RALPH's was in the business of selling pre-paid gift cards such as the one Plaintiff purchased.

1 57. The Visa Gift Card Plaintiff purchased in the amount of \$500 was actually valueless, and
2 thus was not fit for the ordinary purpose for which such gift cards are used, pursuant to *Civil Code* §
3 1791.1(a)(2).

4 58. Plaintiff took reasonable steps to notify RALPH'S, and at RALPH'S request, to also
5 notify KROGER, at its customer service telephone line, that the gift card did not have the expected
6 quality, i.e. a \$500 value.

7 59. Plaintiff was harmed as the gift card he purchased for \$500 and a \$5.95 activation fee did
8 not have any value at all.

9 60. Defendants' failure to adequately take preventative measures to prevent the sale of
10 valueless gift cards at their stores, such as Defendants' failure to adequately train or require their
11 associates to carefully and consistently inspect gift cards prior to sale for evidence of tampering, and
12 failure to adequately restrict the public from having access to gift cards on the shelves of their stores by
13 keeping them behind a counter where consumers who want to purchase gift cards must request them
14 from an attendant, were a substantial factor in causing Plaintiff harm.

15 61. As a result, Plaintiff and the putative class have been damaged in an amount to be proven
16 at trial.

17 **FIFTH CAUSE OF ACTION**

18 **Unjust Enrichment**

19 **(By Plaintiff Against RALPH'S and KROGER and Does 1-50)**

20 62. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
21 paragraphs 1-59 as if fully set forth herein.

22 63. When Plaintiff purchased the Visa Gift Card from the Ralph's Grocery Store located at
23 1770 Carson Street in Torrance, California, he paid \$500 for the Gift Card and also incurred a \$5.95
24 activation fee. Thus, Defendants received a \$505.95 benefit from the Gift Card transaction with Plaintiff,
25 who in return received a valueless Gift Card from the RALPH'S store. Despite his numerous requests,
26 Defendants retained the \$505.95 benefit they received from Plaintiff, at his sole expense, and the \$505.95
27 has not been otherwise returned to him by Defendants, who have therefore been unjustly enriched as a
28 result of their business practice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the class, prays for relief and judgment as follows:

1. For certification of the putative class;
2. For restitution and disgorgement of the money and property wrongfully obtained by Defendants by means of their herein-alleged unlawful, unfair and fraudulent business practices;
3. An award of general damages according to proof;
4. An award of special damages according to proof;
5. Exemplary damages in light of Defendants' fraud, malice, and conscious disregard for the rights of Plaintiff;
6. Injunctive relief, including without limitation, public injunctive relief, in the form of an order requiring Defendants to take preventative measures to prevent the sale of valueless gift cards at their stores and/or a permanent injunction enjoining Defendants from engaging in the unlawful, unfair, and fraudulent business practices alleged herein;
7. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation, the CLRA, the common law private attorney general doctrine, *Code of Civil Procedure* § 1021.5, and *Civil Code* § 1794;
8. For costs of suit;
9. For such other and further relief as the court deems just and proper.

Dated: April 25, 2022

**SCHONBRUN SEPLOW HARRIS
HOFFMAN & ZELDES LLP**

By: 

HELEN I. ZELDES
JOSHUA A. FIELDS

*Counsel for Plaintiff,
Yosuke Hiradate, on behalf of himself and
all others similarly situated.*

DEMAND FOR JURY TRIAL

Plaintiff YOSUKE HIRADATE hereby demands a jury trial.

Dated: April 25, 2022

**SCHONBRUN SEPLOW HARRIS
HOFFMAN & ZELDES LLP**

By: 

HELEN I. ZELDES
JOSHUA A. FIELDS

*Counsel for Plaintiff,
Yosuke Hiradate, on behalf of himself and
all others similarly situated.*

DECLARATION OF PROPER VENUE BY YOSUKE HIRADATE

I, Yosuke Hiradate, declare as follows:

1. I am a Plaintiff in this action, and I am a resident and citizen of the State of California. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code § 1780(d) in that Los Angeles County is a county where Defendant does business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Torrance, California on April 15, 2021.



Yosuke Hiradate

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 9415 Culver Boulevard, #115, Culver City, CA 90232.

On April 25, 2022, I caused the service of the following document(s) described as:

**SECOND AMENDED COMPLAINT FOR DAMAGES AND PERMANENT
INJUNCTIVE RELIEF**

on all interested parties in this action by the following means of service:

Jacob M. Harper
jharper@dwt.com
James H. Moon
jamesmoon@dwt.com
K. Peter Bae
peterbae@dwt.com

DAVIS WRIGHT TREMAINE LLP

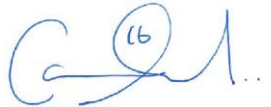
865 S Figueroa St, Ste 2400,
Los Angeles, CA 90017
Telephone: 213-633-6800
Facsimile: 213-633-6899

*Attorneys for Defendants RALPH'S GROCERY COMPANY, an Ohio Corporation;
THE KROGER COMPANY, an Ohio Corporation.*

X **[BY E-SERVICE]** - Electronic Service through One Legal, LLC. I affected electronic service by submitting an electronic version of the documents to One Legal, LLC, www.onelegal.com, which caused the documents to be sent by electronic transmission to the person(s) at the electronic service address(es) listed above.

X **[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2022, at Culver City, California.



Carlos Gallegos

EXHIBIT 28

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DAVIS WRIGHT TREMAINE LLP Jacob M. Harper (SBN 259463) James H. Moon (SBN 268215); Peter K. Bae (SBN 329158) 865 S. Figueroa Street, Suite 2400 Los Angeles, CA 90017-2566 TELEPHONE NO.: (213) 633-6800 FAX NO. (Optional): (213) 633-6899 E-MAIL ADDRESS: jacobharper@dwt.com; jamesmoon@dwt.com; peterbae@dwt.com ATTORNEY FOR (Name): Defendants Ralphs Grocery Company & The Kroger Co.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Ave. MAILING ADDRESS: 825 Maple Ave. CITY AND ZIP CODE: Torrance, CA 90503 BRANCH NAME: Torrance Courthouse	
PLAINTIFF/PETITIONER: YOSUKE HIRADATE DEFENDANT/RESPONDENT: RALPH'S GROCERY COMPANY, et al.	
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: 21TRCV00301
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: June 1, 2022 Time: 8:30 a.m. Dept.: B Div.: Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): James H. Moon	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (answer one):
 - a. ☒ This statement is submitted by party (name): Defendants Ralph's Grocery Company & The Kroger Co. (Defendants)
 - b. ☐ This statement is submitted **jointly** by parties (names):
2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date): April 19, 2021
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service** (to be answered by plaintiffs and cross-complainants only)
 - a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action): Plaintiff asserts putative claims against Defendants for violation of California's Unfair Competition Law (UCL), Consumers Legal Remedies Act (CLRA), and False Advertising Law (FAL), as well as for common law breach of implied warranty of merchantability and unjust enrichment based on the sale of a \$500 gift card that was allegedly tampered with by third parties prior to the sale.

Page 1 of 5

PLAINTIFF/PETITIONER: YOSUKE HIRADATE DEFENDANT/RESPONDENT: RALPHS GROCERY COMPANY, et al.	CASE NUMBER: 21TRCV00301
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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
Plaintiff seeks restitution, damages, injunctive relief, and attorneys' fees on behalf of a class of individuals who allegedly purchased, and was unable to redeem, a gift card from Defendants' stores.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*: No trial date should be set because the case is not yet at issue.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: 3 days
b. ☐ hours (short causes) *(specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
b. Firm:
c. Address:
d. Telephone number: f. Fax number:
e. E-mail address: g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 of the California Rules of Court for information about the processes available through the court and community programs in this case.
- (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
- (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
- b. **Referral to judicial arbitration or civil action mediation** (if available).
- (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
- (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- (3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*: CRC 3.811(b)(2)

PLAINTIFF/PETITIONER: YOSUKE HIRADATE DEFENDANT/RESPONDENT: RALPHS GROCERY COMPANY, et al.	CASE NUMBER: 21TRCV00301
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER: YOSUKE HIRADATE
 DEFENDANT/RESPONDENT: RALPHS GROCERY COMPANY, et al.

CASE NUMBER:
 21TRCV00301

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
 Motion for summary judgment

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Defendant	Written Discovery	Per Code
Defendant	Third-Party Discovery	Per Code
Defendant	Depositions	Per Code
Defendant	Expert Discovery	Per Code

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: YOSUKE HIRADATE DEFENDANT/RESPONDENT: RALPHS GROCERY COMPANY et al.	CASE NUMBER: 21TRCV00301
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17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain)*:
- b. ☐ After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify)*:

20. Total number of pages attached *(if any)*: _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 17, 2022

James H. Moon

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)



(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE BY ELECTRONIC AND U.S. MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On May 17, 2022, I served the foregoing document(s) described as: **DEFENDANTS' CASE MANAGEMENT STATEMENT** by forwarding a portable document file to the electronic mail address(es) below:

EMAIL ADDRESSES: jfields@sshhzlaw.com; hzelde@sshhzlaw.com; cgallegos@sshhzlaw.com

☒ **(FROM ELECTRONIC MAIL ADDRESS monicadavis@dwt.com)** at Suite 2400, 865 South Figueroa Street, Los Angeles, California.

SERVICE ADDRESS

Joshua A. Fields
Helen Zeldes
Carlos Gallegos
Schonbrun Seplow Harris Hoffman & Zeldes,
LLP
501 W. Broadway, Suite 800
San Diego, CA 92101
Tel: (619) 400-4990
Fax: (310) 399-7040

Attorneys for Plaintiff Yosuke Hiradate

☒ I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on May 17, 2022, at Los Angeles, California.

☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Monica Davis

Print Name



Signature

EXHIBIT 29

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Helen I. Zeldes - SBN 2200751 / Joshua A. Fields - SBN 242938 SCHONBRUN SEPLOW HARRIS HOFFMAN & ZELDES, LLP 501 W. Broadway, Suite 800 San Diego, CA 92101 TELEPHONE NO.: 619-400-4990 FAX NO. (Optional): 310-399-7040 E-MAIL ADDRESS: hzeldes@sshhzlaw.com, jfields@sshhzlaw.com ATTORNEY FOR (Name): Plaintiff Yosuke Hiradate, an individual, on behalf of himself and all others similarly situated.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Avenue MAILING ADDRESS: 825 Maple Avenue CITY AND ZIP CODE: Torrance, CA 90503 BRANCH NAME: Torrance Courthouse	
PLAINTIFF/PETITIONER: Yosuke Hiradate, an individual, on behalf of himself and all others similarly situated. DEFENDANT/RESPONDENT: Ralph's Grocery Company and The Kroger Company, et al.	
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: 21TRCV00301
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: June 1, 2022 Time: 8:30 a.m. Dept.: B Div.: Room: Address of court (if different from the address above): <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name):	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☒ This statement is submitted by party (name): Plaintiff Yosuke Hiradate
 - b. ☐ This statement is submitted **jointly** by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
 Claims for violations of Bus. & Prof. Code 17200, et seq. ("UCL"), Civil Code 1750, et seq. ("CLRA"), and Bus. & Prof. Code 17500, et seq. ("FAL"), and unjust enrichment against Ralph's & Kroger for selling a valueless gift card but charging \$505.95.

Page 1 of 5

PLAINTIFF/PETITIONER: Yosuke Hiradate, an individual, on behalf of himself and all others similarly situated.	CASE NUMBER: 21TRCV00301
DEFENDANT/RESPONDENT: Ralph's Grocery Company and The Kroger Company, et al.	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
 Defendants Ralph's Grocery and Kroger Co. sold Plaintiff a valueless gift card while charging him \$500 for the supposed card value and \$5.95 to activate it. Defendants did not return Plaintiff's money, which they've unlawfully retained. Plaintiff seeks a public injunction and damages from Defendants on behalf of a class for engaging in this unfair and unlawful business practice.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: Five (5)
 b. ☐ hours (short causes) *(specify)*:

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. E-mail address:
 f. Fax number:
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 of the California Rules of Court for information about the processes available through the court and community programs in this case.
- (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
- (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
- b. **Referral to judicial arbitration or civil action mediation (if available).**
- (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
- (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- (3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

PLAINTIFF/PETITIONER: Yosuke Hiradate, an individual, on behalf of himself and all others similarly situated.
 DEFENDANT/RESPONDENT: Ralph's Grocery Company and The Kroger Company, et al.

CASE NUMBER:
 21TRCV00301

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="checked" type="checkbox"/>	<input checked="checked" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER: Yosuke Hiradate, an individual, on behalf of himself and all others similarly situated.
 DEFENDANT/RESPONDENT: Ralph's Grocery Company and The Kroger Company, et al.

CASE NUMBER:
 21TRCV00301

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
 Motion for Class Certification; Motion for preliminary public injunctive relief under UCL, FAL, and CLRA.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff	Percipient depositions	Per Code
Plaintiff	Written discovery (RFPs, ROGs, RFPs)	Per Code
Plaintiff	Expert discovery	Per Code

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: Yosuke Hiradate, an individual, on behalf of himself and all others similarly situated.
 DEFENDANT/RESPONDENT: Ralph's Grocery Company and The Kroger Company, et al.

CASE NUMBER:
 21TRCV00301

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain)*:
- b. ☐ After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify)*:

20. Total number of pages attached *(if any)*: 0

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 17, 2022

Joshua A. Fields

(TYPE OR PRINT NAME)

/s/ Joshua A. Fields

(SIGNATURE OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 9415 Culver Boulevard, #115, Culver City, CA 90232.

On May 17, 2022, I caused the service of the following document(s) described as:

PLAINTIFF'S CASE MANAGEMENT STATEMENT

on all interested parties in this action by the following means of service:

Jacob M. Harper

jharper@dwt.com

James H. Moon

jamesmoon@dwt.com

Peter K. Bae

peterbae@dwt.com

DAVIS WRIGHT TREMAINE LLP

865 S Figueroa St, Ste 2400,

Los Angeles, CA 90017

Telephone: 213-633-6800

Facsimile: 213-633-6899

Attorneys for Defendants RALPH'S GROCERY COMPANY, an Ohio Corporation;

THE KROGER COMPANY, an Ohio Corporation.

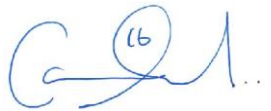
X

[BY E-SERVICE] - Electronic Service through One Legal, LLC. I affected electronic service by submitting an electronic version of the documents to One Legal, LLC, www.onelegal.com, which caused the documents to be sent by electronic transmission to the person(s) at the electronic service address(es) listed above.

X

[STATE] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 17, 2022, at Culver City, California.

A handwritten signature in blue ink, appearing to read 'CG' with a circled '16' above it, followed by three dots.

Carlos Gallegos

EXHIBIT 30

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
3 *jharper@dwt.com*
4 James H. Moon (SBN 268215)
5 *jamesmoon@dwt.com*
6 Peter K. Bae (SBN 329158)
7 *peterbae@dwt.com*
8 865 South Figueroa Street, Suite 2400
9 Los Angeles, California 90017-2566
10 Telephone: (213) 633-6800
11 Facsimile: (213) 633-6899

12 *Attorneys for Defendants Ralphs Grocery*
13 *Company and The Kroger Co.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

16 YOSUKE HIRADATE, an individual, on behalf
17 of himself and all others similarly situated,

18 Plaintiff,

19 v.

20 RALPHS GROCERY COMPANY, an Ohio
21 Corporation; THE KROGER COMPANY, an
22 Ohio Corporation; and DOES 1-50, inclusive,

23 Defendants.

Case No. 21TRCV00301
Assigned to the Hon. Gary Y. Tanaka

**NOTICE TO STATE COURT AND TO
ADVERSE PARTIES OF REMOVAL TO
FEDERAL COURT**

Action Filed: April 19, 2021
Trial Date: n/a

1 **TO THE CLERK OF THE COURT AND TO ADVERSE PARTIES:**

2 **PLEASE TAKE NOTICE THAT** on May 25, 2022, Defendants Ralphs Grocery
3 Company and The Kroger Co. (Defendants) filed a Notice of Removal of this action to the
4 United States District Court for the Central District of California. A true and correct copy of the
5 Notice of Removal in this action is attached hereto as **Exhibit A** and is served and filed herewith.
6 The action has therefore been removed to the United States District Court for the Central District
7 of California, and, pursuant to 28 U.S.C. § 1446(d), the State court action is stayed and “the State
8 court shall proceed no further unless and until the case is remanded.”

9 DATED: May 25, 2022

DAVIS WRIGHT TREMAINE LLP

11 By: 

12 Jacob M. Harper

13 *Attorneys for Defendants Ralphs Grocery*
14 *Company and The Kroger Co.*

EXHIBIT A

**Omitted for Purposes of Notice of
Removal to United States District Court**

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On May 25, 2022, I served the foregoing document(s) described as: **NOTICE TO STATE COURT AND TO ADVERSE PARTIES OF REMOVAL TO FEDERAL COURT** as follows:

Joshua A. Fields
 Schonbrun Seplow Harris Hoffman & Zeldes,
 LLP
 501 W. Broadway, Suite 800
 San Diego, CA 92101
jfields@sshhzlaw.com
 Tel: (619) 400-4990
 Fax: (310) 399-7040

Attorneys for Plaintiff Yosuke Hiradate

X (VIA MAIL) I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

X (VIA EMAIL) By forwarding a portable document file to the electronic mail address(es) below from electronic mail address linapearmain@dwt.com, at Suite 2400, 865 South Figueroa Street, Los Angeles, California.

Executed on May 25, 2022, at Los Angeles, California.

- ☒ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Lina Pearmain

Print Name



Signature

EXHIBIT 31

CASE INFORMATION

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Case Number: 21TRCV00301

YOSUKE HIRADATE VS RALPH'S GROCERY COMPANY, ET AL.

Filing Courthouse: Torrance Courthouse

Filing Date: 04/19/2021

Case Type: Other Commercial/Business Tort (not fraud/ breach of contract) (General Jurisdiction)

Status: Pending

[Click here to access document images for this case](#)

If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page

FUTURE HEARINGS

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

06/01/2022 at 08:30 AM in Department B at 825 Maple Ave., Torrance, CA 90503
Case Management Conference

PARTY INFORMATION

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

FIELDS JOSHUA A. - Attorney for Plaintiff

HARPER JACOB M. - Attorney for Defendant

HIRADATE YOSUKE - Plaintiff

RALPH'S GROCERY COMPANY - Defendant

THE KROGER COMPANY - Defendant

ZELDES HELEN IRENE - Attorney for Plaintiff

DOCUMENTS FILED

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Documents Filed (Filing dates listed in descending order)

05/17/2022 Case Management Statement

Filed by Yosuke Hiradate (Plaintiff)

05/17/2022 Case Management Statement

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

04/25/2022 Second Amended Complaint

Filed by Yosuke Hiradate (Plaintiff)

04/14/2022 Stipulation to Extend Deadline to Respond to First Amended Complaint; [Proposed] Order

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

04/08/2022 Notice of Continuance

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

04/01/2022 Stipulation to Extend Deadline to Respond to First Amended Complaint; [Proposed] Order

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

03/11/2022 Substitution of Attorney

Filed by Yosuke Hiradate (Plaintiff)

02/24/2022 Declaration (of Jacob M. Harper Regarding Inability to Meet and Confer [CCP 430.41])

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

02/02/2022 Minute Order ((Case Management Conference))

Filed by Clerk

01/26/2022 Notice (of timely Filing and Service of First Amended Complaint)

Filed by Yosuke Hiradate (Plaintiff)

01/25/2022 Case Management Statement

Filed by Ralph's Grocery Company (Defendant)

01/25/2022 Notice of Non-Opposition to Demurrer to Complaint

Filed by Ralph's Grocery Company (Defendant)

01/24/2022 Case Management Statement

Filed by Yosuke Hiradate (Plaintiff)

01/20/2022 Amended Complaint (First (1st))

Filed by Yosuke Hiradate (Plaintiff)

09/22/2021 DEFENDANTS NOTICE REGARDING ORDER CONTINUING CASE MANAGEMENT CONFERENCE AND HEARING ON DEMURRER

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

07/13/2021 Certificate of Mailing for ([Request for Entry of Default / Judgment])

Filed by Clerk

07/13/2021 Notice of Rejection of Electronic Filing

Filed by Clerk

07/07/2021 Declaration (of Jacob Harper ISO Demurrer)

Filed by Ralph's Grocery Company (Defendant)

07/07/2021 Demurrer - without Motion to Strike

Filed by Ralph's Grocery Company (Defendant)

06/04/2021 Declaration (Declaration of Jacob Harper Regarding Meet Inability to Meet and Confer CCP 430.41)

Filed by Ralph's Grocery Company (Defendant)

04/27/2021 Proof of Personal Service

Filed by Yosuke Hiradate (Plaintiff)

04/27/2021 Proof of Personal Service

Filed by Yosuke Hiradate (Plaintiff)

04/21/2021 Notice of Case Management Conference

Filed by Clerk

04/21/2021 Order to Show Cause Failure to File Proof of Service

Filed by Clerk

04/19/2021 Notice of Case Assignment - Unlimited Civil Case

Filed by Clerk

04/19/2021 Summons (on Complaint)

Filed by Yosuke Hiradate (Plaintiff)

04/19/2021 Civil Case Cover Sheet

Filed by Yosuke Hiradate (Plaintiff)

04/19/2021 Complaint

Filed by Yosuke Hiradate (Plaintiff)

PROCEEDINGS HELD

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Proceedings Held (Proceeding dates listed in descending order)

04/12/2022 at 08:30 AM in Department B

Case Management Conference - **Not Held - Rescheduled by Court**

02/02/2022 at 08:30 AM in Department B, Gary Y. Tanaka, Presiding

Case Management Conference - **Held - Continued**

02/02/2022 at 08:30 AM in Department B

Hearing on Demurrer - without Motion to Strike - **Not Held - Vacated by Court**

12/21/2021 at 08:30 AM in Department B

Hearing on Demurrer - without Motion to Strike - **Not Held - Rescheduled by Court**

12/21/2021 at 08:30 AM in Department B

Case Management Conference - **Not Held - Rescheduled by Court**

10/19/2021 at 08:30 AM in Department B

Case Management Conference - **Not Held - Rescheduled by Court**

07/26/2021 at 08:30 AM in Department B

Order to Show Cause Re: Failure to File Proof of Service - **Not Held - Vacated by Court**

REGISTER OF ACTIONS

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Register of Actions (Listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

[04/27/2021](#)

05/17/2022 Case Management Statement

Filed by Yosuke Hiradate (Plaintiff)

05/17/2022 Case Management Statement

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

04/25/2022 Second Amended Complaint

Filed by Yosuke Hiradate (Plaintiff)

04/14/2022 Stipulation to Extend Deadline to Respond to First Amended Complaint; [Proposed] Order

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

04/12/2022 at 08:30 AM in Department B

Case Management Conference - **Not Held - Rescheduled by Court**

04/08/2022 Notice of Continuance

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

04/01/2022 Stipulation to Extend Deadline to Respond to First Amended Complaint; [Proposed] Order

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

03/11/2022 Substitution of Attorney

Filed by Yosuke Hiradate (Plaintiff)

02/24/2022 Declaration (of Jacob M. Harper Regarding Inability to Meet and Confer [CCP 430.41])

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

02/02/2022 at 08:30 AM in Department B, Gary Y. Tanaka, Presiding

Case Management Conference - **Held - Continued**

02/02/2022 at 08:30 AM in Department B

Hearing on Demurrer - without Motion to Strike - **Not Held - Vacated by Court**

02/02/2022 Minute Order ((Case Management Conference))

Filed by Clerk

01/26/2022 Notice (of timely Filing and Service of First Amended Complaint)

Filed by Yosuke Hiradate (Plaintiff)

01/25/2022 Case Management Statement

Filed by Ralph's Grocery Company (Defendant)

01/25/2022 Notice of Non-Opposition to Demurrer to Complaint

Filed by Ralph's Grocery Company (Defendant)

01/24/2022 Case Management Statement

Filed by Yosuke Hiradate (Plaintiff)

01/20/2022 Amended Complaint (First (1st))

Filed by Yosuke Hiradate (Plaintiff)

12/21/2021 at 08:30 AM in Department B

Hearing on Demurrer - without Motion to Strike - **Not Held - Rescheduled by Court**

12/21/2021 at 08:30 AM in Department B

Case Management Conference - **Not Held - Rescheduled by Court**

10/19/2021 at 08:30 AM in Department B

Case Management Conference - **Not Held - Rescheduled by Court**

09/22/2021 DEFENDANTS NOTICE REGARDING ORDER CONTINUING CASE MANAGEMENT CONFERENCE AND HEARING ON DEMURRER

Filed by Ralph's Grocery Company (Defendant); The Kroger Company (Defendant)

07/26/2021 at 08:30 AM in Department B

Order to Show Cause Re: Failure to File Proof of Service - **Not Held - Vacated by Court**

07/13/2021 Notice of Rejection of Electronic Filing

Filed by Clerk

07/13/2021 Certificate of Mailing for ([Request for Entry of Default / Judgment])

Filed by Clerk

07/07/2021 Demurrer - without Motion to Strike

Filed by Ralph's Grocery Company (Defendant)

07/07/2021 Declaration (of Jacob Harper ISO Demurrer)

Filed by Ralph's Grocery Company (Defendant)

06/04/2021 Declaration (Declaration of Jacob Harper Regarding Meet Inability to Meet and Confer CCP 430.41)

Filed by Ralph's Grocery Company (Defendant)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

[TOP](#) [04/27/2021](#)

04/27/2021 Proof of Personal Service

Filed by Yosuke Hiradate (Plaintiff)

04/27/2021 Proof of Personal Service

Filed by Yosuke Hiradate (Plaintiff)

04/21/2021 Notice of Case Management Conference

Filed by Clerk

04/21/2021 Order to Show Cause Failure to File Proof of Service

Filed by Clerk

04/19/2021 Complaint

Filed by Yosuke Hiradate (Plaintiff)

04/19/2021 Summons (on Complaint)

Filed by Yosuke Hiradate (Plaintiff)

04/19/2021 Notice of Case Assignment - Unlimited Civil Case

Filed by Clerk

04/19/2021 Civil Case Cover Sheet

Filed by Yosuke Hiradate (Plaintiff)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

[TOP](#) [04/27/2021](#)